108-314

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 245.

HOWARD COUNTY, IN THE STATE OF MISSOURI, PLAINTIFF IN ERROR,

vs.

THE CENTRAL NATIONAL BANK OF BOONVILLE, MISSOURI.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED AUGUST 2, 1880.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Missouri, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, at the November term, 1879, thereof, between The Central National Bank of Boonville, Missouri, pl'ff, and against Howard County, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said Howard County, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C,, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 21st day of January, in the year of our Lord one thousand eight hundred and eighty.

Issued at office in the city of Jefferson with the seal of the circuit court of the United States for the eastern division of the western district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—

A. KREKEL, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Western District of Missouri, Eastern Division, ss:

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at the city of Jefferson, this sixteenth day of July, A. D. 1880.

[SEAL.] H. C. GEISBERG, *Clerk.*

(Indorsed:) No. 1349. United States circuit court, eastern division western district of Missouri. Central National Bank, Boonville, vs. Howard County. Writ of error to the circuit court of the United States for the eastern division of the western dist. of Missouri. Returned and filed day of , 187 . , clerk.

3 The United States of America to The Central National Bank of Boonville, Missouri, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern division of the western district of Missouri, wherein Howard County, in the State of Missouri, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Arnold Krekel, judge of the circuit court of the United States for the western district of Missouri, this 21st day of January, in the year of our Lord one thousand eight hundred and eighty.

A. KREKEL, *Judge.*

4 UNITED STATES OF AMERICA.
Western District of Missouri, ss:

We hereby acknowledge due service of the within citation this 14th day of July, A. D. 1880.

DRAFFEN & WILLIAMS,
Attorneys for Defendant in Error.

(Indorsed:) United States circuit court, eastern division western district of Missouri. Central National Bank, Boonville, vs. Howard County. Citation. Filed , 187 . , clerk.

5 UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri, set.:

Pleas before the honorable circuit court of the United States in and for the eastern division of the western district of Missouri, at the November term, A. D. 1879, in the case of—

THE CENTRAL NATIONAL BANK OF BOONVILLE, plaintiff,
against
HOWARD COUNTY, DEFENDANT. } No. 1349.

Be it remembered that heretofore, to wit, on the 24th day of October, A. D. 1879, there was filed in the office of the clerk of the circuit court of the United States for the eastern division of the western district of Missouri a petition in the words and figures following, to wit:

Petition

In the circuit court of the United States, eastern division of western district of Missouri. November term, 1879.

THE CENTRAL NATIONAL BANK OF BOONVILLE, plaintiff,
vs.
HOWARD COUNTY, DEFENDANT.

Plaintiff for cause of action states that the plaintiff is a banking associa-

tion established in the eastern division of the western district of Missouri, under the laws of the United States providing for national banking associations, and as such is duly organized, created, and incorporated under the name of The Central National Bank of Boonville, under and by virtue of the provisions of an act of Congress of the United States, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof,
6 approved June 3d, 1864, and the several acts amendatory thereof," and that the defendant is a citizen of the State of Missouri, and is a municipal corporation of said State, organized as such under the laws thereof, and composed of citizens of said State, and located in the eastern division of the western district of Missouri.

Plaintiff states that the defendant did, on the first day of December, 1869, by its certain writing obligatory, called and known as Howard County bond number 13, and signed by William R. Heath, presiding justice of the county court of Howard County, Missouri, and attested by A. J. Herndon, clerk of said court, and sealed with the seal of the county court of said county, acknowledge itself indebted and firmly bound unto the Tebo and Neosho Railroad Company, then and there being a corporation duly created and organized under the laws of the State of Missouri, in the sum of one thousand dollars, which sum the said county of Howard, by its said writing obligatory, promised to pay to the said Tebo and Neosho Railroad Company, or the bearer thereof, in current funds, at the National Bank of Commerce, in New York, on the first day of December, 1879, together with interest thereon from the said first day of December, 1869, the date of said bond, at the rate of eight per cent. per annum, which interest it is provided by said bond shall be payable semi-annually on the first days of June and December of each year, on the presentation and delivery at said bank of the coupons annexed to said bond as they shall severally become due and payable.

Plaintiff states that said bond with others, each for the sum of
7 one thousand dollars, was issued under and pursuant to an order of the county court of Howard County, in the State of Missouri, made at the November term of said court, held in the city of Fayette, in the year 1869, and that said order was made by authority of and in accordance with the power conferred upon said county court of Howard County under an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Tebo and Neosho Railroad Company," approved January 16th, 1860, and the said bond so recites upon its face. Plaintiff avers that said defendant issued, negotiated, and delivered said bonds and coupons attached to said company in payment of a subscription made by said county to the stock of said Tebo and Neosho Railroad Company aforesaid under and by virtue of the act of the general assembly aforesaid, and that thereafter the defendant levied and collected taxes for seven years to pay the interest on said bonds, and did, during all that time, pay the interest coupons attached to said bonds as they severally became due and payable.

Plaintiff states that among the coupons attached to said bond was a certain one which is herewith filed, bearing date the first day of December, 1869, whereby the defendant acknowledged itself to owe the sum of forty dollars, in current funds, on the first day of June, 1878 (being the semi-

annual interest to that date on said bond number 13 for one thousand dollars), payable to bearer at The National Bank of Commerce, in New York. And the said bond and coupon are in words and figures as appears by Exhibit A, annexed to this petition, and made a part of each count of same.

8 Plaintiff further states that said coupon was duly presented for payment and payment thereof demanded, which was refused and that same remains wholly unpaid.

Plaintiff states further that it is the owner and bearer of said coupon for value, wherefore plaintiff demands judgment for the sum of forty dollars and interest thereon from the maturity thereof.

And plaintiff for another cause of action states that the plaintiff is a banking association, established in the eastern division of the western district of Missouri, under the laws of the United States providing for national banking associations, and as such is duly organized, created, and incorporated under the name of The Central National Bank of Boonville, under and by virtue of the provisions of an act of Congress of the United States entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and the several acts amendatory thereof, and that the defendant is a citizen of the State of Missouri, and is a municipal corporation of said State, organized as such under the laws thereof, and composed of citizens of said State, and located in the eastern division of the western district of Missouri. Plaintiff states that the defendant did on the first day of December, 1869, by its certain other writings obligatory, called and known as Howard County bonds, and of like tenor and effect as said bond set out in the first count of this petition, and num-

9 bered 9, 10, 11, 12, 13, 14, 26, 44, 45, 46, 55, 56, 156, 157, 158, 159, and signed by William R. Heath, presiding justice of the county court of Howard County, Missouri, and attested by A. J. Herndon, clerk of said court, and sealed with the seal of the county court of said county, acknowledge itself indebted and firmly bound unto the Tebo and Neosho Railroad Company, then and there being a corporation duly created and organized under the laws of the State of Missouri, in the sum of one thousand dollars by each of said bonds, which sum the said county of Howard by each of its said writings obligatory promised to pay to the said Tebo and Neosho Railroad Company or bearer thereof, in current funds at National Bank of Commerce, in New York, on the first day of December, 1879, together with *with* interest thereon from the said first day of December, 1869, the date of said bond, at the rate of eight per cent. per annum, which interest it is provided by said bond shall be payable semi-annually on the first days of June and December of each on the presentation and delivery at said bank of the coupons annexed to said bond as they should severally become due and payable. Plaintiff states that said bonds, each for the sum of one thousand dollars, were issued under and pursuant to an order of the county court of Howard County, in the State of Missouri, made at the November term of said court, held in the city of Fayette, in the year 1869, and that said order was made by authority of and in accordance with the power conferred upon said county court

10 of Howard County, under an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Tebo and

Neosho Railroad Company," approved January 16th, 1860, and the said bonds so recite upon their face.

Plaintiff avers that the said defendant issued, negotiated, and delivered said bonds and coupons attached to said company in payment of a subscription made by said county to the stock of said Tebo and Neosho Railroad Company aforesaid, under and by virtue of the act of the general assembly aforesaid, and that thereafter the defendant levied and collected taxes for seven years to pay the interest on said bonds, and did during all that time pay the interest coupons attached to said bonds as they severally became due and payable. Plaintiff states that among the coupons attached to said bonds numbered as aforesaid were certain coupons herewith filed, 11 in number, and bearing date the first of December, 1869, by each of which the defendant acknowledged itself to owe the sum of forty dollars in current funds, on the first day of December, 1878, being the semi-annual interest to that date on said bonds respectively, numbered 9, 10, 11, 12, 14, 26, 44, 45, 46, 55, 56, and certain other coupons of like date, tenor, and effect, and being the semi-annual interest on said bonds number 159, 158, 157, 156, 56, 55, 46, 45, 44, 26, 14, 12, 11, 10, and 9, to June 1st, 1878, and which coupons are herewith filed and are due and payable on the first day of June, 1878, and certain other coupons herewith filed bearing same date as above and of like tenor and effect, and being the semi-annual interest to June
1st, 1878, on bonds numbered 159, 158, 157, 156, 56, 55, 45, 44, 13,
11 12, and all of which coupons are due and *and* payable on the first
day of June, 1879, and all of said coupons are payable to the Tebo and Neosho Railroad Company or bearer at the National Bank of Commerce, in New York, and which coupons aggregate the sum of fourteen hundred and forty dollars, and of like tenor and effect as the coupon set out in the first count of this petition. And the said bonds and coupons are in words and figures as appears by Exhibit A, and annexed to this petition and made a part of each count of the same. Plaintiff further states that said coupons were duly presented for payment and payment thereof demanded, which was refused, and the same remains wholly unpaid.

Plaintiff states that it is the owner and bearer of said coupons for value, wherefore plaintiff demands judgment for the sum of fourteen hundred and forty dollars and interest thereon from the maturity thereof.

And plaintiff for another cause of action, states that the plaintiff is a banking association, established in the eastern division of the western district of Missouri, under the laws of the United States providing for national banking associations, and as such is duly organized, created, and incorporated under the name of The Central National Bank of Boonville, under and by virtue of the provisions of an act of Congress of the United States, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and the several acts amendatory thereof; and that the defendant is a citizen of the State of Missouri, and
is a municipal corporation of said State, organized as such under
12 the laws thereof, and composed of citizens of said State, and located in the eastern division of the western district of Missouri Plaintiff states the defendant did by its certain other writings obligatory called and known as Howard County bonds, numbered 232, 233, 234 235, 236, 237, 238, 239, 240, 246, 247, 248, 252, 272, 282, 284, 294, 298,

299, 313, 314, 326, 336, 345, 343, 341, 400, all dated on the 3d day of November, 1871, and signed by William Heath, presiding justice of the county court of Howard County, Missouri, and attested by A. J. Herndon, clerk of said court, and sealed with the seal of the county court of said county, acknowledge itself indebted and firmly bound unto the Tebo and Neosho Railroad Company, then and there being a corporation duly created and organized under the laws of the State of Missouri, in the sum of one thousand dollars each, which sum the said county of Howard by each of its said writings obligatory promised to pay to the said Tebo and Neosho Railroad Company, or the bearer thereof, in current funds, at the National Bank of Commerce, in New York, ten years after the date of said bonds, together with interest thereon from the said 3d day of November, 1871, the date of said bonds, at the rate of eight per cent. per annum, which interest it is provided by said bonds shall be payable semi-annually on the 3d days of May and November of each year, on the presentation and delivery at said bank of the coupons annexed to said bonds as they should severally become due and payable.

Plaintiff states that said bonds with others, each for the sum of one thousand dollars, were issued under and pursuant to orders of the
13 county court of Howard County, in the State of Missouri, made on the 5th day of February, 6th day of November, 1869, and 27th day of November, 1871, and that said orders were made by authority of and in accordance with the power conferred upon said county court of Howard County, under an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Tebo and Neosho Railroad Company," approved January 16th, 1860, and the said bonds so recite upon their face.

Plaintiff avers that the said defendant issued, negotiated, and delivered said bonds and coupons attached, to said company in payment of a subscription made by said county to the stock of said Tebo and Neosho Railroad Company aforesaid, under and by virtue of the act of the general assembly aforesaid, and that thereafter the defendant levied and collected taxes for seven years to pay the interest on said bonds, and did during all that time pay the interest coupons attached to said bonds as they severally became due and payable.

Plaintiff states that among the coupons attached to said bonds were certain ones herewith filed, all bearing date on the 3d day of November, 1871, by each of which the defendant acknowledges itself to owe the sum of forty dollars in current funds on the 3d day of May, 1878, being the semi-annual interest to that date on said bonds, respectively, No. 232, 233, 234, 235, 236, 237, 238, 239, 240, 247, 248, (252,) 272, 282, 284, 294, 298, 299, 313, 314, 326, 336, 345, 343, 341, and 400, making in all 26 coupons payable to the Tebo and Neosho Railroad Company or bearer, at the National Bank of Commerce, in New York, and that by 25 other coupons of like tenor and effect, and bearing the same date and herewith filed,
14 the defendant acknowledged itself to owe by each of said coupons the sum of forty dollars, being the semi-annual interest on said bonds (except No. 252), to May 3d, 1879, and which coupons were due and payable on the 3d of May, 1879, to the Tebo and Neosho Railroad Company or bearer, at the National Bank of Commerce, in New York, and by 16 other coupons, of like tenor and effect and of same date, being the semi-annual interest on said bonds No. 247, 248, 252, 272, 282, 284, 294, 298,

299, 313, 314, 326, 336, 345, 343, 341, to November 3d, 1878, and which coupons are herewith filed, the defendant acknowledged itself to owe by each of said coupons the sum of forty dollars, payable to the Tebo and Neosho Railroad Company or bearer, at the National Bank of Commerce, in New York, the aggregate amount of said coupons being $2,680, and said bonds and coupons are in words and figures as appears by Exhibit A, annexed to this petition, and made a part of each count of the same.

Plaintiff further states that said coupons were duly presented for payment, and payment thereof demanded, which was refused, and the same remains wholly unpaid. Plaintiff states that is the owner and bearer of said coupons for value, wherefore plain' demands judgment for the sum of twenty-six hundred and eighty dollars and interest thereon from the maturity thereof, and for costs.

DRAFFEES & WILLIAMS,
Att'ys for Plaintiff.

EXHIBIT A.

Copy of bond.

UNITED STATES OF AMERICA.

Howard County bond No. ; ten year bond; interest eight per cent. per annum, payable on the first days of June and December, each year. One thousand dollars; ten years; State of Missouri,
15 county of Howard.

Know all men by these presents that the county of Howard, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company in the sum of one thousand dollars in current funds, which sum the said county hereby promises to pay to the said Tebo and Neosho Railroad Company, or bearer, at the National Bank of Commerce, in New York, on the first day of December, 1879, together with interest thereon from the first day of December, 1869, at the rate of eight per cent. per annum, which interest shall be payable semi-annually on the first days of June and December of each year, in current funds, on the presentation and delivery at said bank of the coupons hereto severally attached. This bond being issued in pursuance of an order of the county court of Howard County, made at the November term of said court, held in the city of Fayette in the year A. D. 1869, which order was made in accordance with an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Tebo and Neosho Railroad Company," approved January 16th, 1860. In testimony whereof the said county of Howard has executed this bond by the presiding justice of the county court of Howard County, under order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court. Done at the city of Fayette, county of Howard aforesaid, this first day of December, 1869.

[L. S.]

WM. R. HEATH,
Presiding Justice of the County Court of Howard County, State of Missouri.

16 Attest:

A. J. HERNDON,
Clerk of the County Court of Howard County, State of Missouri.

Copy of coupon.

40.] Coupon. [40.

FAYETTE, HOWARD COUNTY, MISSOURI,
December 1, 1869.

The County of Howard acknowledges to owe the sum of forty dollars in current funds on the first day of December, 1878, being six months' interest on bond No. 45 for one thousand dollars, and payable to bearer at the National Bank of Commerce in New York.

(Signed) A. J. HERNDON,
Clerk of Howard County Court.

And thereupon on the 25th day October, A. D. 1879, there was issued out of said clerk's office a summons in the words and figures following, to wit:

Summons.

EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *set.:*

The President of the United States of America to the marshal of the United States, for the western district of Missouri, greeting:

You are hereby commanded to summon Howard County, a citizen of and a municipal corporation of the State of Missouri, and the western district thereof, to be and appear before the honorable circuit court of the United States in and for the eastern division of the western district of Missouri, on the first day of the next term thereof, to be begun and holden at the city of Jefferson, in said district, on the third Monday, the 17th day of November next, then and there to answer the complaint of The Central National Bank of Boonville, a banking association organized and incorporated under the laws of the United States, as set forth in the petition filed in the office of the clerk of said court on the 24th day of October, A. D. one thousand eight hundred and seventy-nine.

17 Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 25th day of October, A. D. eighteen hundred and seventy-nine. Issued at office, in the city of Jefferson, in said district, under the seal of said circuit court, the day and year last aforesaid.

[L. S.] H. C. GEISBERG,
Clerk of said Court.

Upon said summons the United States marshal for said district made the following return, to wit:

Marshal's return.

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri, set.:

I do hereby certify that I executed this writ of summons by leaving a copy of the same, together with a copy of the petition filed in the case,

with S. B. Cunningham, county clerk of Howard Co., Mo., in his office as county clerk, in the town of Fayette, co. of Howard, on the 27th day of October, A. D. 1879.

C. C. ALLEN,
U. S. Marshal Western District of Missouri,
By C. C. CRIPPEN,
Deputy.

And afterwards, at a regular stated term of the circuit court of the United States in and for the eastern division of the western district of Missouri, begun and holden on the third Monday, the 17th day of November, A. D. 1879, at Jefferson City, in said district, the following proceedings were had in this case on the 20th day of November, A. D. 1879, to wit:

Answer filed.

CENTRAL NATIONAL BANK BOONVILLE
vs. } 1349.
HOWARD COUNTY.

This day comes the defendant, by John D. Stevenson, esq., its
18 attorney, and by leave of court files answer herein. Thereupon leave is granted plaintiff to reply thereto.

And said answer so filed as aforesaid is in the words and figures following, to wit:

Answer.

In cir. court United States for eastern div. of western district of Mo., Nov. T., 1879.

THE CENTRAL NATIONAL BANK OF BOONVILLE,
plaintiff,
against
HOWARD COUNTY, DEF'T.

The defendant comes and for answer to the petition of plaintiff says that defendant admits that the several instruments in writing purporting to be the obligations of Howard County, as the same are set forth in petition of plaintiff, and therein styled Howard County bonds, were executed at the several dates therein mentioned, and were signed by Wm. R. Heath, claiming to be presiding justice of the Howard County *county* court, and that same were attested by A. J. Herndon, claiming to be clerk of the county court of Howard County, and that the seal attached to said instrument is the seal of said court. But defendant denies that said instruments in writing so set forth in plaintiff's petition are the obligations, bonds, or promises of Howard County; and further denies that the same were authorized to be issued or made by any law of the State of Missouri in force at the time of the making of said instruments of writing, and denies that the said county court of Howard County had any power or authority of law to authorize the making of the said instruments of *of* writing, or to make

any order in regard to same, or to empower the said Wm. R. Heath or the said A. J. Herndon to do or perform the several acts by them done and performed as the same are set forth as acts done by them as officials of Howard County.

19 Defendant denies that the county court of Howard County had any authority to make the order alleged in plaintiff's petition to have been made at the November term of said court, held in the city of Fayette in the year 1869, and specially denies that same was authorized by the act of January 16th, 1860, as averred by plaintiff.

Defendant further denies that the county court of Howard County had any power or authority to make the orders of Feb. 5th, 1868, November 6th, 1869, and 27th of November, 1871, and says that each of said orders are without any authority of law, are in no wise binding upon this defendant.

Defendant denies that the county court of Howard County had any authority or power to make or cause to be made, or to issue or deliver, the instruments set forth in plaintiff's petition, and therein described as Howard County bonds and coupons, to the Tebo and Neosho Railroad Company, or to make any order in regard to same, or to do any acts whereby this defendant became liable to pay any of the obligations set forth in plaintiff's petition.

Plaintiff denies that the county court of Howard County were at any time authorized by law to make any subscription to the capital stock of the Tebo & Neosho Railroad Company, or to issue or deliver to said company any bonds or other obligations of Howard County. Defendant says that each and every act set forth in plaintiff's petition purporting to be the act of Howard County *county* court was without warrant and authority of law and are of no legal force and effect, and do not constitute any cause of action against this defendant.

Defendant, further answering, says that the several instruments in writing set forth in plaintiff's petition and averred to be the writings ob-

20 ligatory of Howard County are not the obligations of this defendant; that the same were made and issued without authority; that there was no power in the parties making said instruments to create the same, and that said instruments of writing are of no validity, and constitute no cause of action against this defendant. Defendant says that the act entitled "An act to incorporate the Tebo and Neosho Railroad Company," approved January 16, 1860, did not authorize or empower the county court of Howard County to subscribe to the capital stock of said company for and in behalf of this defendant, and did not authorize or empower the making, issuing, or delivering of the instruments set forth in pl'ff's petition; that each and every one of said causes of action set forth in plaintiff's petition were made without any authority in law; that the same are utterly void, and constitute no cause why plaintiff should recover against this defendant the sum of four thousand and eighty-eight dollars, or any other amount. Defendant denies that Howard County is indebted to plaintiff on account of the several causes of action set forth in plaintiff's petition one cent; and, having fully answered, prays to be discharged, with costs.

STEVENSON & ROBERTSON,
Atty's for Def't.

And afterwards, at chambers, before the honorable Arnold Krekel, judge, the following further proceedings were had in this case on the 7th day of January, 1880, to wit:

CENTRAL NATIONAL BANK, BOONVILLE,
vs. } 1349.
HOWARD COUNTY.

This day there is presented to the Hon. Arnold Krekel, judge, at chambers, an application for a subpœna duces tecum, on consideration
21 whereof it is ordered that a subpœna duces tecum be issued herein, returnable on Monday, the 12th day of January, 1880, against John Montgomery, jr., commanding him to be and appear before this court on said day and bring with him "the book known as the record book of the Tebo and Neosho Railroad Company, and containing the record of the proceedings of the board of directors of the Tebo and Neosho Railroad Company."

And afterwards, at said last-mentioned regular stated term of said circuit court, and at an adjourned day thereof, the following further proceedings were had in this case, on the 12th day of January, A. D. 1880, to wit:

Amended petition filed.— Answer refiled.— Reply.— Stipulation and jury waiver filed.

CENTRAL NATIONAL BANK, BOONVILLE,
vs. } 1349.
HOWARD COUNTY.

This day comes the plaintiff, by Messrs. Draffen & Williams, its attorneys, and the defendant, by Messrs. John D. Stevenson and James H. Robertson, and, by consent of parties, plaintiff files an amended petition herein, to which the defendant, by leave of court, refiles its answer; thereupon plaintiff files a reply to defendant's answer, also a stipulation, signed by counsel, as to the pleadings in this cause, and also an agreement, signed by counsel, waiving a jury herein.

Thereupon, this case being regularly called for trial, the same is tried by the court sitting as a jury, whereupon evidence is heard, cause argued by counsel, and submitted upon the pleadings and proofs.

On consideration whereof, and being fully advised concerning the premises, the court finds the issues joined for the plaintiff, and assesses the damages by it sustained by reason of the non-payment of the coupons in the petition described, in the sum of five thousand six hundred and
22 seventy-eight dollars and ten cents ($5,678.10).

Judgment.

It is therefore considered by the court that the plaintiff, The Central National Bank of Boonville, Missouri, recover against the defendant, the County of Howard, in the State of Missouri, the said sum of five thousand six hundred and seventy-eight dollars and ten cents ($5,678.10), so found to be due, together with its costs herein expended, and have execution therefor.

Special finding of facts returned.

Thereupon the court returns a special finding of facts herein, which is signed, and ordered to be filed and made part of the record.

On motion of defendant's attorney, the supersedeas bond in this case is fixed at the sum of seven thousand five hundred dollars ($7,500).

And said amended petition, so filed as aforesaid, is in the words and figures following, to wit:

Amended petition.

In the circuit court of the United States, eastern division, western district of Missouri. November term, 1879.

THE CENTRAL NATIONAL BANK OF BOONVILLE, plaintiff,
vs.
HOWARD COUNTY, DEFENDANT.

Plaintiff for amended petition, leave of the court being first had and obtained, states that the plaintiff is a banking association, established in the eastern division of the western district of Missouri, under the laws of the United States providing for national banking associations, and as such is duly organized, created, and incorporated under the name of The Central National Bank of Boonville, under and by virtue of the provisions of an act of Congress of the United States entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864,
23 and the several acts amendatory thereof; and that the defendant is a citizen of the State of Missouri, and is a municipal corporation of said State, organized as such under the laws thereof, and composed of citizens of said State, and located in the eastern division of the western district of Missouri.

Plaintiff states that the defendant did by each of its certain writings obligatory, called and known as Howard County bonds, and numbered, respectively, 232, 233, 234, 235, 236, 237, 238, 239, 240, 246, 247, 248, 252, 272, 282, 284, 294, 298, 299, 313, 314, 326, 336, 340, 341, 343, 345, and 400, and each signed by William R. Heath, presiding justice of the county court of Howard County, Missouri, and attested by A. J. Herndon, clerk of said court, and sealed with the seal of the county court of said county, acknowledge itself indebted and firmly bound unto the Tebo and Neosho Railroad Company, then and there being a corporation duly created and organized under the laws of the State of Missouri, in the sum of one thousand dollars, which sum the said county of Howard by each of its said writings obligatory, promise to pay to the said Tebo and Nesho Railroad Company, or the bearer thereof, in current funds, at the National Bank of Commerce, in New York, ten years after the date of said bonds, together with interest thereon from the said third day of November, 1871, the date of said bond, at the rate of ten per cent. per annum, which interest it is provided by said bonds shall be payable semi-annually on the third days of May and November of each year, on the

presentation and delivery at said bank of the coupons annexed to said bonds, as they should severally become due and payable.

Which said bonds are each, except as to number thereof, in words and figures as follows, to wit:

UNITED STATES OF AMERICA.

24 No. .] [1,000.00

Ten-years' Howard County bond.

Interest eight per cent. per annum, payable on the 3rd days of May and November.

Know all men by these presents that the county of Howard, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company in the sum of one thousand dollars (in current funds), which sum the said county hereby promises to pay to the Tebo and Neosho Railroad Company, or bearer, at the National Bank of Commerce, in New York, ten years after the date of this bond, together with interest thereon from date, at the rate of eight per cent. per annum, which interest shall be payable semi-annually, in current funds, on the presentation and surrender at said bank of the annexed coupons, as they severally become due and payable.

This bond is issued in pursuance of the orders of the county court of Howard County, made, respectively, on the 5th day of February, 1868, 6th day of November, 1869, and 27th day of November, 1871, which orders were made in accordance with an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Tebo and Neosho Railroad Company," approved January 16th, 1860.

In testimony whereof the said county of Howard has executed this bond by the presiding justice of the county court of Howard County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court.

Done at the city of Fayette, county of Howard aforesaid, this third day of November, 1871.

[SEAL.] WM. R. HEATH,

25 *Presiding Justice of the County Court of Howard County, State of Missouri.*

Attest:

A. J. HERNDON,
Clerk of the County Court of Howard County, State of Missouri.

And the coupons attached to said bonds, except as to date and number, are in words and figures as follows, to wit:

FAYETTE, HOWARD COUNTY, MISSOURI,
November 3d, 1871.

The County of Howard acknowledges to owe the sum of forty dollars, in current funds, on the 3d day of , 187 , being six month's inter-

est on bond No. , for one thousand dollars, and payable to the Tebo and Neosho Railroad Company, or bearer, at the National Bank of Commerce in New York.

A. J. HERNDON,
Clerk of Howard County Court.

Plaintiff states that said bonds, with others, each for the sum of one thousand dollars, was issued under and pursuant to orders of the county court of Howard County, in the State of Missouri, made on the 5th day of February, 1868, 6th day of November, 1869, and the 27th day of November, 1871, and that said orders were made by authority of and in accordance with the power conferred upon said county court of Howard County under an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Tebo and Neosho Railroad Company," approved January 16th, 1860, and the said bonds so recite upon their face. Plaintiff avers that the said defendant issued, negotiated, and delivered said bonds and coupons attached to said company in payment of a subscription made by said county to the stock of the said Tebo and Neosho Railroad Company aforesaid, under and by virtue of the act of the general assembly aforesaid, and that thereafter the defendant levied and collected taxes for seven years to pay the interest coupons on said bonds, and did, during all that time, pay said interest coupons attached
26 to said bonds as they severally became due and payable.

Plaintiff states that among other coupons attached to said bonds there was attached to each of them a certain coupon (all of which are herewith filed) bearing date on the third day of November, 1871, and by each of which said coupons (being 27 in all) the defendant acknowledged itself to owe the sum of forty dollars, in current funds, on the 3d day of May, 1878, and being the semi-annual interest due at that date on bonds numbered 232, 233, 234, 235, 236, 237, 238, 239, 240, 247, 248, 252, 272, 282, 284, 294, 298, 299, 313, 314, 326, 336, 340, 341, 343, 345, and 400, respectively, and amounting in the aggregate to the sum of one thousand & eighty dollars; and also certain other coupons herewith filed, bearing date on the 3d day of November, 1871, and by each of which said coupons (being 17 in all) the defendant acknowledged itself to owe the sum of forty dollars in current funds on the 3d day of November, 1878, and being the semi-annual interest due at that date on said bonds, numbered 247, 248, 252, 272, 282, 284, 294, 298, 299, 313, 314, 326, 336, 340, 341, 343, and 345, respectively, and amounting in the aggregate to the sum of six hundred and eighty dollars; and also certain other coupons herewith filed, bearing date on the 3d day of November, 1871, and by each of which said coupons (being 26 in all) the defendant acknowledged itself to owe the sum of forty dollars in current funds on the 3d day of May, 1879, and being the semi-annual interest due at that date on said bonds numbered 232, 233, 234, 235, 236, 237, 238, 239, 246, 247, 248, 272, 282, 284, 294, 298, 299, 313, 314, 326, 336, 340, 341, 343, 345, and 400, respectively, and amounting in the aggregate to the sum of one thousand &
27 forty dollars, and also certain other coupons herewith filed, bearing date on the 3d day of November 1871, and by each of which said coupons (being 19 in all) the defendant acknowledges itself to owe the sum of forty dollars in current funds on the 3d day of

November, 1879, and being the semi-annual interest due at that date on said bonds numbered 232, 233, 234, 235, 236, 237, 238, 239, 240, 282, 284, 294, 298, 299, 313, 314, 326, 340, and 400, respectively, and amounting in the aggregate to seven hundred and sixty dollars, and all payable to the Tebo and Neosho Railroad Company, or bearer, at the National Bank of Commerce, in New York, at the times above stated respectively. Plaintiff further states that said coupons were duly presented for payment and payment thereof demanded, which was refused, and that the same remains wholly unpaid. Plaintiff states that it is the owner and bearer of same for value, and plaintiff therefore asks judgment for the sum of thirty-five hundred & sixty dollars (the amount due upon all of said coupons), together with interest thereon from the maturity of said coupons respectively. And plaintiff for another cause of action states that the plaintiff is a banking association established in the eastern division of the western district of Missouri, under the laws of the United States providing for national banking associations, and as such is duly organized, created, and incorporated under the name of The Central National Bank of Boonville, under and by virtue of the provisions of an act of Congress of the United States, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and the several acts amendatory
28 thereof, and that the defendant is a citizen of the State of Missouri, and is a municipal corporation of said State, organized as such under the laws thereof and composed of said citizens of said State, and located in the eastern division of the western district of Missouri. Plaintiff states that the defendant did by each of its certain writings obligatory, called and known as Howard County bonds, and numbered, respectively, 9, 10, 11, 12, 13, 14, 26, 44, 45, 46, 55, 56, 156, 157, 158, and 159, and each signed by Wm. R. Heath, presiding justice of the county court of Howard County, Missouri, and attested by A. J. Herndon, clerk of said court, and sealed with the seal of the county court of said county, acknowledge itself indebted and firmly bound unto the Tebo and Neosho Railroad Company, then and there being a corporation duly created and organized under the laws of the State of Missouri, in the sum of one thousand dollars, which sum the said county of Howard, by each of its said writings obligatory, promised to pay to the said Tebo and Neosho Railroad Company, or the bearer thereof, in current funds, at the National Bank of Commerce in New York, on the first day of December, 1879, together with interest thereon from the first day of December, 1869, the date of said bonds, at the rate of eight per cent. per annum, which interest it is provided by said bonds shall be payable semi-annually on the first day of June and December of each year, on the presentation and delivery at said bank of the coupons annexed to said bonds as they should severally become due and payable. Which said bonds are each, except as to the numbers thereof, in words and figures as follows, to wit:

No. .] Howard County bond. 10 years. [Ten-year bond.

29 Interest eight per cent. per annum, payable on the first days of June & December each year.

$1,000.] STATE OF MISSOURI, HOWARD COUNTY.

Know all men by these presents that the County of Howard, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company in the sum of one thousand dollars, in current funds, which the said county hereby promises to pay to the said Tebo and Neosho Railroad Company, or bearer, at the National Bank of Commerce in New York, on the first day of December, 1879, together with interest thereon from the first day of December, 1869, at the rate of eight per cent. per annum, which interest shall be payable semi-annually on the first days of June and December of each year, in current funds, on the presentation and delivery at said bank of the coupons hereto severally attached; this bond being issued in pursuance of an order of the county court of Howard County, made at the November term of said court, held in the city of Fayette, in the year A. D. 1869, which order was made in accordance with an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Tebo and Neosho Railroad Company," approved January 16th, 1860.

In testimony whereof the said County of Howard has executed this bond by the presiding justice of the county court of Howard County, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same, and affixing thereto the seal of said court.

Done at the city of Fayette, county of Howard aforesaid, this first day of December, 1869.

[L. S.] WM. R. HEATH,
Presiding Justice of the County Court of Howard County, State of Missouri.

Attest:
A. J. HERNDON,
30 *Clerk of the County Court of Howard County, State of Missouri.*

And the coupons attached to said bonds, except the date of payment and number, are in words and figures as follows, to wit:

FAYETTE, HOWARD COUNTY, MISSOURI,
December 1st, 1869.

The County of Howard acknowledges to owe the sum of forty dollars in current funds on the first day of December, 1879, being six months' interest on bond No. for one thousand dollars, and payable to bearer at the National Bank of Commerce in New York.

A. J. HERNDON,
Clerk of Howard County Court.

Plaintiff states that said bonds, with others, each for the sum of one thousand dollars, was issued under and pursuant to an order of the county court of Howard County, in the State of Missouri, made at the Novem-

ber term of said court, held in the city of Fayette, in the year 1869, and that said order was made by authority of and in accordance with the power conferred upon said county court of Howard County under an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Tebo and Neosho Railroad Company," approved January 16th, 1860, and said bonds so recite upon their face. Plaintiff avers that the said defendant issued, negotiated, and delivered said bonds and coupons attached to said company in payment of a subscription made by said county to the stock of said Tebo and Neosho Railroad Company aforesaid, under and by virtue of the act of the general assembly aforesaid, and that thereafter the defendant levied and collected taxes for seven years to pay the interest on said bonds, and did during all that time pay the interest coupons attached to said bonds as they severally became due and payable.

Plaintiff further states that among other coupons attached to said bonds there were attached to each of them a certain coupon (all of which are herewith filed) bearing date on the first day of December, 1869, and by
31 each of which said coupons (being 11 in all), the defendant acknowledged itself to owe the sum of forty dollars in current funds on the first day of December, 1878, and being the semi-annual interest to that date due on said bonds numbered 9, 10, 11, 12, 14, 26, 44, 45, 46, 55, and 56, respectively, and amounting in the aggregate to the sum of four hundred and forty dollars; and also certain other coupons (herewith filed), bearing date on the first day of December, 1869, and by each of which said coupon (being 16 in all), the defendant acknowledged itself to owe the sum of forty dollars in current funds, on the first day of June, 1878, and being the semi-annual interest due at that date on said bonds numbered 13, 14, 26, 44, 45, 46, 55, 56, 156, 157, 158, 159, 9, 10, 11, and 12, respectively, and amounting in the aggregate to the sum of six hundred and forty dollars; and also certain other coupons herewith filed, bearing date on the first day of December, 1869, and by each of which (being 10 in all), the defendant acknowledged itself to owe the sum of forty dollars in current funds, on the first day of June, 1879, and being the semi-annual interest due at that date on said bonds numbered, respectively, 12, 13, 44, 45, 55, 56, 156, 157, 158, and 159, and aggregating the sum of four hundred dollars; and also certain other coupons (herewith filed), bearing date on the first day of December, 1869, and by each of which the defendant acknowledged itself to owe the sum of forty dollars in curren funds, on the first day of December, 1879, and being the semi-annual interest due at that date on said bonds numbered 13, 45, 55, 56, 156, 158, 157, and 159, respectively, and aggregating the sum of three hundred and twenty dollars, all payable to the Tebo and Neosho Railroad Company, or bearer, at the National Bank of Commerce, in New York, at the
32 times above stated respectively. Plaintiff states that said coupons were duly presented for payment, and payment thereof demanded, which was refused, and that the same remains wholly unpaid.

Plaintiff states that it is the owner and bearer of same for value, and plaintiff asks judgment for the sum of eighteen hundred dollars, amount of all of said coupons in this count, and interest from the maturity thereof respectively.

Wherefore plaintiff prays judgment for the sum of five thousand three

hundred and sixty dollars, (the aggregate amount of all the coupons filed herewith), and interest thereon, and for costs.

DRAFFEN & WILLIAMS,
Att'ys for Plaintiff.

(And the answer so refiled on said 12th day of January, A. D. 1880, will be found copied on page , of this transcript.)

And said reply filed on said last-mentioned day is in the words and figures following, to wit:

Reply.

In the circuit court of the United States, eastern division of western district of Missouri, November term, 1879.

THE CENTRAL NATIONAL BANK OF BOONVILLE, plaintiff,
vs.
HOWARD COUNTY, DEFENDANT.

Now comes the plaintiff by attorneys, and for replication to the new matter set up in the defendant's answer, denies each and every material allegation therein contained, and now having fully answered asks to have judgment, as prayed in the petition. Draffen & Williams, att'ys for plaintiff.

And said stipulation filed on said 12th January, 1880, is in the words and figures following, to wit:

Stipulation.

In the circuit court of the United States, eastern division of western district of Missouri, November term, 1879.

THE CENTRAL NATIONAL BANK OF BOONVILLE, plaintiff,
vs.
HOWARD COUNTY, DEFENDANT.

33 It is hereby stipulated that no exception shall be taken to the petition of plaintiff in this cause on account of the joinder in the same count of the several coupons therein sued upon, & that the answer shall be taken as an answer to both counts of the petition.

DRAFFEN & WILLIAMS,
Att'ys for Plaintiff.
STEVENSON & ROBERTSON,
Att'ys for Def't.

And the agreement to waive a jury so filed as aforesaid is in the words and figures following, to wit:

Jury waiver.

In cir. court U. S. e. division western district of Missouri, adj'd t. Jan'y 11th, 1880.

CENTRAL NAT. B'K OF BOONVILLE, PL'T'FF,
vs.
HOWARD COUNTY, DEF'T. } No. 1349.

Now at this day come the parties pl'ff & def't, by their attorneys, and here in open court waive jury in the above-entitled cause.

DRAFFEN & WILLIAMS,
Att'ys for Pl't'ff.
STEVENSON & ROBERTSON,
Att'ys for D'f't.

And said special finding of facts so returned on said 12th day of Jan'y, 1880, are in words and figures as follows, to wit:

Special finding of facts.

In the circuit court of the United States, eastern division of the western district of Missouri. Nov. term, 1879.

THE CENTRAL NATIONAL BANK OF BOONVILLE,
plaintiff,
vs.
HOWARD COUNTY, DEFENDANT.

This cause coming on for trial, an agreement of counsel for plaintiff and defendant is filed in open court, whereby a jury is waived and the case submitted to the court, and the court specially finds the facts as follows:

1. On the 16th day of January, 1860, an act was passed by the general assembly of the State of Missouri, incorporating the Tebo and Neosho Railroad Company with a capital stock of five millions of dollars,
34 divided into shares of one hundred dollars each, and by section six of said act said corporation was given power as follows: "Section six. Said company shall have full power to survey, mark, locate, construct, maintain, and operate a railroad, commencing at any point on the Pacific railroad, between the west bank of the Laramie River and Muddy Creek, in Pettis County, by the most direct and practicable route in a southerly or southwesterly direction through Henry County; thence to some point on the State line between the northwest corner of Jasper and the southeast corner of McDonald county," and that it is provided further by said section, as follows: "And may extend branch railroads into and through any counties that the directors may deem advisable."

2. That the 14th section of the act of the general assembly of the State of Missouri, entitled "An act to incorporate the Osage Valley and Southern Kansas Railroad Company," approved November 21st, 1857, is made a part of the act to incorporate the Tebo and Neosho Railroad Company above recited, and by said section it is provided as follows:

"SEC. 14. It shall be lawful for the county court of any county in which

any part of the route of said railroad or branches may be, or any county adjacent thereto, to subscribe to the stock of the company, or invest its three per cent. fund, or other internal-improvement fund belonging to the county, as stock in said road, and for the stock subscribed in behalf of the county may issue the bonds of the county to raise the funds to pay the same, and to take proper steps to protect the interest and credit of the county court; may appoint an agent to represent the county, vote for it, and receive its dividends. Any incorporated city, town, or incorporated company may subscribe to the stock in said railroad company, and appoint an agent to represent its interest, give its votes, and receive its dividends, and may take proper steps to guard and protect the interest of such city, town, or corporation."

And also 15th section of said act of Nov. 21st, 1857, as follows:

"SEC. 15. Said company shall have power to extend, construct, maintain, and operate their said railroad or branches beyond the limits of this State, and are hereby authorized to make contracts for the same, and shall have power to contract for and construct all necessary bridges over navigable streams, so the same may in no wise interfere with the free navigation of the same."

3. That the board of directors adopted on the 18th day of June, 1867, and the 10th day of July, 1867, the following resolutions:

Proceedings of board of directors of Tebo & Neosho R. R. Co.

SEDALIA, *June 18th*, 1867—Four o'clock p. m.

The directors convened pursuant to adjournment. Present, the same persons in attendance in the morning, and also A. C. Avery. The board proceeded to the election, by ballot, of the officers of the commpany, which resulted as follows, to wit:

A. C. Marvin was elected president.
T. L. Wilson " " vice "
Chas. I. Robards " " secretary.
Cyrus Newkirk " " treasurer.

The president took the chair, and P. A. Ladue was appointed secretary pro tem. The board thereupon proceeded to the election of the executive committee, which resulted in the choice of Messrs. Birge, Heplar, Wilson, Robords, & Newkirk.

Dr. Heplar moved that the company will at once proceed to break ground at Sedalia, in the construction of the Tebo & Neosho Railroad.

The motion was seconded, and after consideration and discussion the following resolution was, on motion of P. A. Ladue, adopted as a substitute for the motion of Dr. Heplar, to wit:

Resolved, that as soon as $200,000 are subscribed to the capital stock of this company by responsible private parties residing in Pettis County, or by the county of Pettis and the city of Sedalia, in their corporate capacities, the line of the road of this company shall be permanently fixed at Sedalia, and the work of grading the road shall be immediately commenced at said point.

On motion of P. A. Ladue, who stated that the counties of Cooper, Howard, & Monroe were anxious for the construction of a railroad in a northeasterly and southwesterly direction through their respective territory,

and were adopting steps to accomplish that purpose, it was resolved that the line of the Tebo and Neosho Railroad should be extended from Sedalia, or from its junction with the Pacific Railroad, in a northeasterly direction to Boonville, in Cooper County, and thence through Fayette, in Howard County, to Renick or Moberly, on the North Missouri Railroad, and thence through Paris, in Monroe County, to or near Monroe Station, on the Hannibal and St. Joseph Railroad, and that a preliminary survey of said line shall be made as soon as practicable.

On motion of Mr. Ladue it was further resolved that a committee, to consist of three members, be appointed to visit Cooper and Howard Counties to solicit subscriptions to the capital stock of this company to aid in the construction of their road upon the line aforesaid.

The president appointed on said committee Messrs. Ladue, Stewart, and Wilson.

On motion of P. A. Ladue, it was resolved that committees be appointed to canvass Bates and Pettis Counties, and secure subscriptions and
37 signatures to petitions praying the county courts of said counties to order elections therein to test the sense of the qualified voters thereof upon the question of subscribing two hundred thousand dollars each to the capital stock of this company.

The president appointed on said committees—

For Bates Co., Messrs. Robords, McGaughey, & Wilson.

For Pettis Co., " Newkirk and Stewart.

On motion, the president was added to the lat'er committee.

On motion of P. A. Ladue, it was ordered that the president and vice-president be, and are hereby, authorized to purchase a good team of mules or horses and harness and a lumber wagon for the use of the engineering corps.

On motion of P. A. Ladue, it was ordered that the president be, and is hereby, directed to procure a journal and ledger of 8 quires each for the general accounts of the company and a cash book of six quires.

On motion of P. A. Ladue, it was ordered that as soon as $200,000 are subscribed to the capital stock of this company by Pettis County, or by responsible parties residing therein, the treasurer shall, and is hereby, fully authorized to dispose of the bonds of Henry County, or a portion thereof, at the price and sum of not less than 85 per centum of the par value thereof, to be paid for in cash, or in such short instalments, not less than 25 per centum being payable every sixty days, as he may deem for the advantage of the company.

On motion of Dr. Hepler the board proceeded to consider the subject of fixing the compensation of its officers and of the board of directors.

On motion of Dr. Hepler the compensation of the members of
38 the board of directors while they, and each of them, are in the actual service of the company, and in going to and returning from the meetings of the board of directors and the meetings of the committees of the board, was fixed at $5.00 per day, together with their necessary expenses, to commence and be allowed from the day of the election.

On the suggestion of Dr. Heplar it was declared that the foregoing provisions shall apply to the members of the recent board of directors in like manner as to those of the present board.

On motion of Mr. Burge the president's salary was fixed at $3,000 per annum, the per diem compensation not to apply in his case.

On motion of Mr. Ladue, at the suggestion & request of Wm. Weaver, recent secretary of the company, Mr. Weaver was allowed the sum of $100 for the record book of the company now in use and his services as secretary, the same to be in addition to his per diem compensation.

On motion of Mr. Ladue the compensation of Thos. L. Wilson, as president of the company, was fixed at the sum of $3,500 to the present date, subject to any and all deductions proper to be made on account of collections by him made of subscriptions to the capital stock of the company and of sums to be applied on such subscriptions when hereafter made.

Some conversation being had upon the subject of the duties of the president and of the labors which will devolve upon him, it was, on motion of Mr. Ladue, unanimously declared to be the sense of the board that the president shall devote his entire time, talents, and best abilities to the business and interest of the company, and for the present particularly to procuring and securing the right of way along the entire line of our road.

39 On motion the board adjourned to meet at Clinton on the second Tuesday of July.

P. A. LADUE,
Sec'y Pro Tem.

CLINTON, *Wednesday, July 10th*, 1867.

Board met. Present, same as on yesterday.

On motion of P. A. Ladue, it was ordered that the line of our road northeasterly of Sedalia, as designated in the resolution of the board of directors adopted on the 18th day of June, 1867, shall be known and designated as the Northeastern Branch Extension of the Tebo & Neosho R. R., & that the means contributed by private, county, town, or city subscription for the construction of said branch extension shall be applied & expended solely thereon.

Ordered further, that there shall be kept separate and distinct accounts of the subscriptions, collections, and expenditures so made on & for said branch extension.

Ordered further, that the southwestern extension of our line of road from the limits of Henry County, or such point beyond as shall be hereafter designated, shall be known as the Fort Scott Branch, and shall terminate at Fort Scott.

The president read before the board a carefully prepared opinion of Judge Wright, of Sedalia, on the powers, privileges, and duties of counties in subscribing to the capital stock of the Tebo & Neosho R. R.

R. L. Burge also delivered a verbal opinion & read evidence from decisions of courts in support of the correctness of Judge Wright's opinion, which, at the suggestion of the president, was ordered to be filed as a part of the papers belonging to this company.

40 On motion of Dr. Heplar the board tender to Judge Wright their thanks for his very able opinion.

On motion of B. F. Hepler, board ordered to be printed 200 copies of Judge Wright's opinion for the benefit of the board & county courts at large.

On motion of R. L. Burge, R. Allen was added to the committee to solicit $25,000.00 from the town of Clinton to the capital stock of our co.

On motion of B. F. Heplar, a committee of three were appointed by the chair to arrange an order of business for the afternoon session of the board, on which committee president appointed B. F. Hepler, Avery, & Newkirk.

Board took recess until 3 o'clock p. m.

4. That the county court of Howard County thereafter, to wit, on the 5th day of February, 1868, after having taken a vote of the white male citizens of said county for information, and which resulted in more than a two-thirds vote in favor of the subscription, made an order subscribing $250,000 dollars to the capital stock of said company, to be used in constructing said northeast branch extension through said Howard County, and afterwards, on the 6th day of November, 1869, made an additional subscription of $150,000, to be used in the same way, and all to be paid in bonds of the county, and that said subscriptions were duly made upon the books of the company by commissioners appointed by said county court, and were accepted by said company.

5. That in pursuance of said subscriptions and orders of the county court, $400,000, in face value, of bonds were issued by said county in payment of said subscriptions, and were negotiated by it; $200,000 of the bonds were sold by an agent of the county and the money paid the
41 company in payment of a part of the subscription, and 200 thousand dollars in bonds were delivered in payment of balance.

6. That the county court of Howard County thereafter levied and collected a tax to pay interest due on said bonds for seven years, and regularly paid the semi-annual interest thereon until March, 1878, and also redeemed a number of said bonds, and that it voted the stock by a commissioner duly appointed by order of the court in the several stockholders' meetings of said Tebo and Neosho Railroad Company, and that afterwards, in the year 1874, said northeastern branch extension of the Tebo and Neosho Railroad Company was, by said company, sold to the Missouri, Kansas and Texas Railway Company, and the county of Howard received 4,000 shares of the stock of the latter company in exchange for its stock of the Tebo & Neosho Railroad Company, which it still holds.

7. That said railroad was completed through said county of Howard, and is now, and has ever since been, in full operation through said county, as originally intended at the time of said subscriptions.

8. That the coupons sued on are for interest upon a part of the bonds issued by the county court of Howard County as aforesaid, and that the plaintiff, which is duly incorporated as a national bank, is the owner and bearer thereof for value & before maturity, and that said bonds & coupons are in words and figures as follows:

Howard County bond.

UNITED STATES OF AMERICA:

Howard County bond, No. . Ten year bond. Interest eight per cent. per annum, payable on the first days of June and December each year. One thousand dollars. Ten years.

42 STATE OF MISSOURI,
County of Howard:

Know all men by these presents that the County of Howard, in the

State of Missouri, acknowledges itself indebted and firmly bound to the Tebo & Neosho Railroad Company in the sum of one thousand dollars in current funds, which sum the said county hereby promises to pay to the said Tebo and Neosho Railroad Company, or bearer, at the National Bank of Commerce, in New York, on the first day of December, 1879, together with interest thereon from the first day of December, 1869, at the rate of eight per cent. per annum, which interest shall be payable semi-annually on the first days of June and December of each year, in current funds, on the presentation and delivery at said bank of the coupons hereto severally attached. This bond being issued in pursuance of an order of the county court of Howard County, made at the November term of said court held in the city of Fayette, in the year A. D. 1869, which order was made in accordance with an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Tebo and Neosho Railroad Company," approved January 16th, 1860.

In testimony whereof the said County of Howard has executed this bond, by the presiding justice of the county court of Howard County, under order of said court, signing his name hereto, and by the clerk of said court, under the order thereof attesting the same, and affixing thereto the seal of said court.

Done at the city of Fayette, county of Howard aforesaid, this first day of December, 1869.

WM. R. HEATH,
Presiding Justice of the County Court of Howard County, State of Missouri.

Attest:
[L. S.] A. J. HERNDON,
Clerk of the County Court of Howard County, State of Missouri.

43 *Coupon.*

40.] FAYETTE, HOWARD COUNTY, MISSOURI,
December 1st, 1869.

40. The County of Howard acknowledges to owe the sum of forty dollars in current funds on the first day of December, 1878, being six months' interest on bond No. 45, for one thousand dollars, and payable to bearer at the National Bank of Commerce in New York.

(Signed) A. J. HERNDON,
Clerk of Howard County Court.

The defendant asks that the following additional finding be made:

1. That the board of directors of the Tebo & Neosho Railroad filed with secretary of state of the State of Missouri, July 8th, 1869, the following certificate:

Resolution of board of directors of Tebo & Neosho R. R. Co.

STATE OF MISSOURI, *ss:*

I, Michael K. McGrath, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete

copy of a resolution of the board of directors of the Tebo and Neosho Railroad Company in relation to the eastern extension of said railroad, filed July 8th, 1869, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of office of the secretary of state. Done at the city of Jefferson this twelfth day of January, A. D. eighteen hundred and eighty.

[SEAL.] MICH'L K. McGRATH,
Secretary of State.

Resolution adopted by the board of directors of the Tebo and Neosho Railroad Company in reference to the eastern extension of said road, viz:

"Resolved, that the main line of the railroad of said company be, and is hereby, extended from Sedalia, in Pettis County, in a northeastern direction, by way of Boonville, in Cooper County, Fayette, in Howard
44 County, Moberly, in Randolph County, to some suitable point on the Hannibal and St. Joseph Railroad, and thence to the railroad bridge at West Quincy, in Marion County, in the State of Missouri, and that the portion of said extension lying between Sedalia and Moberly shall be put under contract, and constructed with as little delay as is consistent with economy and permanency of construction."

STATE OF MISSOURI,
County of Pettis, set:

Be it remembered that on this 3d day of July, A. D. one thousand eight hundred and sixty-nine, Asa C. Marvin, president of the Tebo and Neosho Railroad Company; Richard H. Metter, secretary of said railroad company, and Cyrus Newkirk, treasurer of said railroad company, who are personally known to me, the undersigned, clerk of the county court in and for the county of Pettis and State aforesaid, to be three of the directors of the Tebo and Neosho Railroad Company to have been elected to act in the several offices designated after their respective names, came before me, and, being by me first severally sworn, did depose and say that the foregoing resolution extending the main line of the Tebo and Neosho Railroad was adopted at a meeting of the board of directors of said railroad company, held in Sedalia, Mo., on the 2d day of July, 1869, by a vote of more than two-thirds of the whole number of directors, and that the said resolution is duly entered on the records of said company, and that more than one thousand dollars per mile in length of said railroad, including the extension in said resolution designated, has been subscribed to the capital stock of said railroad company in good faith, and was so subscribed before the adoption by the board of directors of said
45 company of the aforesaid resolution, & that there was paid in cash to proper officers of said company by the stockholders thereof, more than five per centum upon one thousand dollars per mile of said railroad, including said extension, and more than five per centum upon the whole amount subscribed to the capital stock of said railroad company, and that it is the purpose of the said company to build the said railroad upon the line as described in the foregoing resolution.

ASA C. MARVIN,
President.
RICH'D H. METTER,
Secretary.
C. NEWKIRK, *Treas.*

Subscribed and sworn to before me the day and year first herein written.
[SEAL.] SAM. A. YAUKE,
Clerk County Court.

Recorded on pages 416, 417, and 418 book R. R. Asso., vol. I.

(Endorsed:) Filed July 8th, 1869. Francis Rodman, sec'y of State.

That the county court of Howard County duly made the following orders:

Order of county court, Dec. 17th, 1867.

STATE OF MISSOURI,
County of Howard, ss:

In the county court, Tuesday, Dec. 17th, 1867.

Among the proceedings had in said court on the day and year aforesaid, as truly as the same appears of record, were the following, to wit:

Thomas Schackleford, John P. Sebree, and Charles E. Givens, presented a report of the proceedings of a public meeting held in this county on the 2nd instant, and the resolutions requesting the court to order an election to ascertain the views of the white male citizens of Howard County over 21 years of age, on the proposition to subscribe "five hundred thousand dollars ($500,000) to the capital stock of the Louisiana and Missouri River Railroad Company." Upon a hearing of the resolutions, the
46 report of the committee, and arguments thereon, it is ordered by the court that an election be held at the several places of voting in this county on Tuesday after the third Monday in January, 1868, at which election all white male citizens over twenty-one years of age who have resided in this State one year and in the county sixty days are requested to vote upon the following proposition, to wit: "Shall the county of Howard subscribe five hundred thousand dollars ($500,000), that is, two hundred and fifty thousand dollars ($250,000) stock each, to the Louisiana and Missouri River Railroad, from Louisiana, in Pike County, Fayette, and Glasgow to Kansas City, crossing the Missouri River at Glasgow; The Tebo and Neosho Railroad, from Boonville by Fayette to some point on the North Missouri Railroad, under such limitations and restrictions as the court shall deem necessary to secure the expending of the money in this county?" All voting for the proposition shall vote "Railroad, yes;" those opposed shall vote "Railroad, no."

And on the 5th day of February, 1868, the following proceedings were had in said court, to wit:

Order co. c't, Feb'ry 5th, '68.

Andrew J. Herndon, clerk of this court, presents a certificate of the election held in this county on the 21st day of January, 1868, under the order of this court, made on the 17th day of December, 1867, showing the vote to be as follows, to wit:

"Railroad, yes"..... 1,276 votes.
"Railroad, no"..... 549 votes.

Majority for the proposition..... 727 votes.

Ordered by the court that in pursuance of the vote of the people of this county at the election held therein on the 21st day of January, 1868, the county of Howard do subscribe for and take two thousand five
47 hundred shares of the capital stock of the Tebo and Neosho Railroad Company, amounting to the sum of two hundred & fifty thousand dollars, to be paid in the bonds of this county at par value, said bonds or the proceeds thereof to be expended in the construction of the north-eastern branch extension of the railroad of said company through said county of Howard from a point on the Missouri River opposite Boonville, in Cooper County, thence to Fayette, thence to the North Missouri Railroad on the most practicable and advantageous route in the direction of Monroe City, in the county of Monroe; and that Andrew J. Herndon, be, and he is hereby, appointed commissioner of this county to subscribe said stock and to act for and represent the interest of this county in the issue, negociation and sale of the bonds of the county as contemplated by the order of this court this day made; and to vote the stock of this county in said company at any election which may be held for directors thereof. It is further ordered that said commissioner cause to be prepared two hundred bonds of the denomination of five hundred dollars each, made payable ten years after date, redeemable at the option of the county at the expiration of five years from their date with interest at the rate of eight per centum per annum, with suitable coupons thereto attached, the interest to be paid semi-annually at the treasury of the county at Fayette, at which place the principal shall also be payable. The said bonds to be signed by the presiding justice of this court and attested by the clerk thereof with the seal of said court; the coupons to be signed by the clerk. It is further ordered that said commissioner negociate and sell said one hundred thousand dollars of bonds bearing date the 1st day of April,
48 1868, bearing interest and payable as aforesaid; and that he deposite the proceeds thereof in the treasury of this county, and that the treasurer of this county be, and he is hereby, authorized and directed to pay the said money so by him received to the said Tebo and Neosho Railroad Company or to its duly authorized officer or agent, from time to time as the same may be required in the prosecution of the work aforesaid, upon the certificate or certificates of the engineer of the said company of the work actually done as aforesaid. It is further ordered that this court will hereafter fix the denomination, time, and place of payment of the one hundred and fifty dollars of bonds not provided for in this order, the rate of interest to be eight per centum, payable semi-annually. For the purpose of paying the interest on said bonds it is ordered that a tax of one-third of one per centum upon all the property made taxable by law, and upon all licenses in this county, to be called "railroad tax," be levied, assessed, and collected in the year 1868, and each year thereafter until said bonds shall be fully paid.

And on the 8th day of September, 1868, the following proceedings were had, to wit:

Order of county court, Sept. 8th, 1868.

Ordered by the court that William J. Hall, of this county, be authorized to attend a meeting of the board of directors of the Tebo and Neosho Railroad Company to be holden at Fort Scott on the 21st instant, and negociate with said company and take their relinquishment of any and all claims to the appropriation of two hundred & fifty thousand dollars, appropriated by this court for the purpose of building said railroad through Howard, the said railroad company having failed on their part to comply with the order of this court.

49 And on the 6th day of November, 1868, the following proceedings were had, to wit:

Order of county court, Nov. 6th, 1868.

Ordered, that A. J. Herndon, comm'r heretofore app'd, correspond with the Tebo & Neosho R. R. Co., and ascertain if said co. can build said road through this co. If not, correspond with the N. M. R. R. Co. and ascertain whether said co. will construct a branch of their road to Boonville from Renick or Moberly and upon what terms.

And on the 18th day of May, 1869, the following among other proceedings were had, to wit:

Orders of county court, May 19th, 1869.

P. A. Ladue, secretary of the Tebo and Neosho R. R. Co., files a motion asking the court to make an additional subscription to the capital stock of said railroad company in the sum of one hundred & fifty thousand dollars; which motion, having been argued & heard by the court, is continued.

The court appoint Jas. R. Estell commissioner of the county of Howard to attend the meeting of the stockholders of the Tebo & Neosho Railroad Company to vote the stock of said county in the election of directors of said company and to represent the county in all business that may come before the meetings of the stockholders thereof.

And on the 6th day of November, 1869, the following proceedings were had, to wit:

Order of county court, Nov. 6th, 1869.

Ordered by the court, that the following proposition be submitted to the board of directors of the Tebo and Neosho Railroad Company, to wit, Howard County will subscribe to the capital stock of the Tebo and Neosho Railroad Company one hundred and fifty thousand dollars in shares of one hundred dollars each, to be paid in bonds at par, such bonds
50 to be payable in current funds in such time and manner as the county court of Howard County shall hereafter determine, and to bear eight per cent. interest from date of issue, on the following conditions: 1st. Said railroad company to build a branch or extension of said railroad from Sedalia, in Pettis County, to Boonville, in Cooper County, and from a point in this county opposite Boonville on the most direct and practicable route to Fayette in this county, and from Fayette on the most direct

and practicable route to Moberly, in Randolph County. 2nd. The work of grading and bridging said road in this county to be begun in good faith within six months from this date and be vigorously prosecuted and the road completed as a first-class road throughout and cars running thereon in two years thereafter. 3rd. The board of directors of said railroad company to furnish the county court sufficient evidence of their ability to furnish the iron and rolling-stock and complete said road before they are bound to issue any bonds. 4th. Bonds of the county for this subscription to be issued to the company whenever thereafter they shall complete the work of constructing the road-bed on said road to Fayette and shall begin in good faith to grade, bridge & tie the road from Fayette towards Moberly in said county, and to be expended on that part of said road in Howard County. 5th. A depot to be established and kept within six hundred yards of the court-house of Fayette. 6th. The board of directors of said road shall by act of said board accept this proposition and release all claim to interest on any subscription made heretofore by this county to said railroad company, and authorize this county to issue bonds for
51 such subscription to bear date and interest from such time and be payable in such time as the county court shall here*tofore* direct, said acceptance, release, and authority to be filed in the office of the clerk of this court within sixty days or this subscription is withdrawn. It is further ordered that James R. Estell be appointed agent of this county to make said subscription on the books of said company after this proposition is accepted and the acceptance thereof filed as aforesaid.

9. Ordered by the court, that there be issued two hundred bonds of the county of Howard, in the sum of one thousand dollars each, payable in current funds to the Tebo & Neosho Railroad Company, or bearer, at the National Bank of Commerce in New York, ten years after date, bearing interest at the rate of eight per cent. per annum, payable semi-annually, in current funds, at the said Bank of Commerce in New York; said bonds to bear date the first day of December, 1869, with coupons for the interest attached; said bonds to be signed by the presiding justice of this court and attested by the clerk, under the seal of said court, the coupons to be signed by the clerk. And it is ordered that the clerk of this court, deliver said bonds when signed to said Tebo and Neosho Railroad Company, or their agent, said bonds or the proceeds thereof to be used by said railroad company in constructing the railroad of said company in this county. If for any reason any coupons on said bonds shall become due before said bonds used by said railroad company, such past due coupons shall be cut
52 from said bonds and returned to the county. Bonds for fifty thousand dollars, the residue of the two hundred & fifty thousand dollars, the subscription made to said railroad company under the order of this court of 5' February, 1868, shall be issued when the graduation and masonry of that part of the road between Faytte and Moberly is let to contract, and no interest shall accrue on said fifty thousand dollars until bonds are issued therefor.

And on the 15' day of January, 1870, the following proceedings were had, to wit:

Order of county court, Jan'y 15', 1870.

Andrew J. Herndon, clerk of this court, brings into court and delivers to this court two hundred bonds of the county of Howard, in the sum of one thousand dollars each, payable to the Tebo and Neosho Railroad, or bearer, ten years after date, dated the 1' day of December, 1869, bearing interest at eight per cent. per annum, payable semi-annually at the Bank of Commerve, in New York, with coupons for said interest attached, prepared under the order of the court made on the 6' day of November, 1869, and which order is of record on page 240 of this record, and thereupon the court rescind', annul', and set aside the following and every other part of said order requiring the clerk of this court to deliver said bonds to said railroad company, or the agent, to wit: "And it is ordered that the clerk of this court deliver said bonds when signed to said Tebo and Neosho Railroad Company, or their agent," and it is ordered that the clerk of this court hold said bonds and deliver them to this court at the next term thereof,
when the court will appoint an agent of the county of Howard to
53 take charge of said bonds, and to do such acts in relation thereto as this court may direct.

The Tebo and Neosho Railroad Company, by N. G. Elliott, a director of said company, presents to the court a copy of the act of the board of directors of said railroad company, accepting the proposition of the county of Howard to subscribe one hundred and fifty thousand dollars to the capital stock of said company in and by the order of this court made 6' day of November, 1869, on the conditions in said order set out, which said act of the board of directors accepting said propositions is dated 8' day of December, 1869, and said acceptance not having been filed within sixty days from the date of said order, said Elliott moves that the same be now filed by the clerk of this court with the same legal effect as if filed within sixty days, and said motion having been heard is sustained, and said acceptance order filed accordingly. Judge Heath dissents. N. G. Elliott presents to the court a paper in the following words & figures, to wit: "Fayette, Missouri, January 15, 1870. Now at this day comes Newton G. Elliott, agent of the Tebo and Neosho Railroad, of Missouri, authorized by the board of directors of said railroad to receive for said company the $200,000 Howard County bonds heretofore subscribed by said county of Howard to the stock of said railroad company, and on the 6' day of November last past ordered by the said county court of said county of Howard to be paid over and delivered to said company or its agent, and said Elliott as such agent now hereby applies to Andrew J. Herndon, clerk of said court, and demands of him the delivery of said bonds in accordance with said order of said court, and the said Herndon refuses to deliver the same, although same are duly prepared and
54 ready for delivery," and said Elliott moves the court that said paper be filed, which is ordered to be done.

And on the 8' day of February, 1870, the following proceedings were had, to wit:

Order of county court, Feb. 8, 1870.

The court order' that the clerk of this court hold the two hundred bonds

prepared by him under the order of this court of 6' Nov., 1869, until the 18' instant, and at that the court will hear argument in relation to said bonds and make an order for the disposal thereof.

And on the 19' day of February, 1870, the following proceedings were had, to wit:

Order of county court Feb. 19, 1870.

"Ordered by the court that John L. Morrison be, and he is hereby, appointed agent of the county of Howard (in place of Andrew J. Herndon, heretofore appointed commissioner, who declines to serve) to receive from the court two hundred bonds of the county of Howard prepared under the order of this court of 6' day of November, 1869, as part of the subscription of this county of two hundred and fifty thousand dollars to the Tebo and Neosho Railroad Company, made under the order of this court of 5' February, 1868. That said agent proceed to sell one hundred of said bonds so soon as a contract for the construction of the road-bed of the Tebo & Neosho Railroad from Boonville to Fayette, or any part thereof, is let, and that he sell the remainder of said bonds when the progress of the work on said railroad shall render it necessary; and that said agent pay out the proceeds of said bonds at the city of Fayette, upon the monthly estimates of the engineer of said railroad of the work actually done thereon in this county. It is further ordered that said agent take such steps as he may deem proper from time to time
55 to ascertain the correctness of said estimates. That said agent be authorized to pay amounts properly assessed for right of way and all proper expenses of engineering and other proper *and other proper* and necessary expenses on said railroad in this county. It is further ordered that if any coupons on any of said bonds fall due before such bonds are sold such past due coupons shall be cut from said bonds and returned to the county. The said agent is required to charge the Tebo and Neosho Railroad Company with each bond when sold at its par value, and also to charge said company with the sum of five thousand three hundred and fifty-two $\frac{95}{100}$ dollars, heretofore advanced to said company, to pay engineering and other expenses, as part of the subscription of this county to said railroad company above referred to. And it is further that said agent keep an accurate account of all moneys received and paid out by him and report to this court his action under this order from time to time, for the approval of this court, and that he be subject to the supervision and control of this court. It is further ordered that said agent enter into bond to the county of Howard in the sum of two hundred thousand dollars, conditioned for the faithful discharge of his duties under this order. The compensation of said agent is fixed at two per centum on the amount of money actually received and disbursed by him, unless it be necessary to employ an engineer to ascertain the correctness of the monthly estimates, the expenses of which is to be paid by the county."

And on the 15th day of March, 1870, the following proceedings were had, to wit:

Order of county court, Mar. 15th, 1870.

56 The court approve the bond filed by John L. Morrison, agent, appointed by this court on the 19th day of February, 1870, to receive and dispose of the two hundred bonds of the county issued under the order of this court of 6th November, 1869, for the Tebo and Neosho Railroad.

And on the 27th day of November, 1871, the following proceedings were had, to wit:

Order of county court, Nov. 27th, 1871.

It appearing to the court that on the 3d day of November, 1871, a contract for the entire and complete construction of the Tebo and Neosho Railroad, from Sedalia by Boonville to Fayette, thence to Moberly, was entered into by N. G. Elliott and Harvey Bunce, committee on the part of said railroad company of the one part, and Levi Parsons, president of the Land Grant Railway & Trust Company, on behalf of said company, it is ordered by the court that the clerk of this court prepare bonds of the county to the amount of two hundred thousand dollars, the remainder of the subscription of the county of Howard to the Tebo and Neosho Railroad Company, said bonds to be in the sum of $1,000 each, dated 3d November, 1871, payable to the Tebo and Neosho Railroad Company or bearer, ten years after date, bearing eight per cent. per annum interest, payable semi-annually, with coupons for interest attached, both principal and interest payable, in current funds, at the National Bank of Commerce, in New York, said bonds to be signed by the presiding justice of this court, and attested by the clerk, the coupons to have the signature of the clerk lithographed, and the clerk shall immediately deliver said bonds to Thomas J. Payne, who shall hold the same as agent of this county; and when work on said Tebo and Neosho Railroad shall be commenced in good
57 faith north of Fayette, said Thomas J. Payne, agent as aforesaid, shall deliver said bonds to said Tebo and Neosho Railroad Company or bearer. It is further ordered that upon the ratification of the said contract the sum of $12,216.73, now in the hands of John L. Morrison, commissioner, shall be paid to said railroad company; provided, that work on said railroad shall be commenced at Sedalia within sixty days after ratification of said contract, north of Fayette within six months, and the entire road from Sedalia by Boonville to Fayette, thence to Moberly, to be completed and the cars running within eighteen months from the date of said contract, to wit, 3d November, 1871. If work on said road north of Fayette shall not be commenced within said six months from the date of said contract all the coupons past due on said bonds when said work is begun in good faith shall be cut therefrom and returned to the county.

And on the 17th day of February, 1872, the following proceedings were had, to wit:

Order of county court, Feb. 17th, 1872.

It appearing to this court that the contract entered into on 3d Novem-

ber, 1871, by N. G. Elliott and Harvey Bunce, on the part of the Tebo and Neosho Railroad Company on the one part, and Levi Parsons, president of the Land Grant Railway and Trust Company, on the part of said company, of the other part, has been duly ratified by the board of each of said companies, and that work on said Tebo and Neosho Railroad, north of Fayette, has been commenced in good faith, it is hereby ordered that Thomas J. Payne, agent of the county of Howard, deliver to said Tebo and Neosho Railroad Company or its agent the two hundred thousand dollars of the bonds of this county, issued and placed in his hands under and by virtue of the order of this court, made on the 27th day of November, 1871.

58 And on the 6th day of March, 1872, the following proceedings were had, to wit:

Orders of county court, Mar. 6th, 1872.

It appearing to the court that Thomas J. Payne, agent of this county, has delivered to the Tebo and Neosho Railroad Company the two hundred thousand dollars of bonds of the county, as directed by the order of this court, made 17th February, 1872, the court do now approve and ratify the act of said Payne as agent aforesaid.

And on the 8th day of October, 1873, the following proceedings were had, to wit:

Order of county court, Oct. 8th, 1873.

Whereas it appears to the satisfaction of this court that a contract has been duly executed and entered into by and between the Tebo & Neosho Railroad Company of the first part, and the Missouri, Kansas & Texas Railway Company of the second part, dated March 20, 1872, whereby the said Tebo & Neosho Railroad Company have sold to the Missouri, Kansas & Texas Railway Company all that portion of its railroad the title to which still remains in said company, being the extension of the Tebo & Neosho line north from Sedalia via Boonville, Fayette, and Maberly to some suitable point on the Hannibal and St. Joseph Railroad, and thence to the railroad bridge at West Quincy, which said extension was made pursuant to the provisions of the laws of the State of Missouri, on or about the 2d day of July, 1869, and which sale comprehends and embraces all other branch' or extensions heretofore declared by said Tebo and Neosho Railroad Company under the laws aforesaid, and also of all the property real, personal, and mixed, still held and owned by said Tebo and Neosho Railroad Company, and all the corporate rights, franchise, powers, and privileges still outstanding and vested in said company, including the right to declare branches; and whereas the said The Missouri, Kansas & Texas Railway Company,
59 in making the purchase of the line of the Tebo and Neosho Railroad property & franchises as above set forth, agrees to assume all the outstanding liabilities of the Tebo and Neosho Railroad Company connected with the property so sold as aforesaid, and further agrees with said Tebo and Neosho Railroad Company that without unnecessary delay

it will proceed to complete and fully equip the extension so sold and purchased as aforesaid; and it further appearing to the satisfaction of the court that the sale & purchase of the line of road aforesaid is in no wise to change the terms of the contract of November 3d, 1871, as to the manner of constructing said road or time of its completion, said contract to be operative as it now stands; and whereas said sale & purchase as aforesaid has been made by the officers & directors of the respective companies aforesaid, subject to the assent and approval of the stockholders of said companies, as required by the law; and whereas it further appears to the satisfaction of the court that the object and intent of the sale and purchase of the line of road as aforesaid is to consolidate the said Tebo and Neosho Railroad Company with the Missouri, Kansas & Texas Railway Company so as to make one continuous line of road owned by one company; and whereas the county of Howard is a stockholder in said Tebo and Neosho Railroad Company to the number of four thousand shares of the par value of one hundred dollars each, and to the end that the county of Howard do give her assent and approval to said sale and purchase, it is ordered by the court that James R. Estill be, and he is hereby, appointed the agent and representative of Howard County, to assent to the ratification and approval of the sale and purchase of the line of road aforesaid, and to sign the name of the county of Howard to any paper whenever the same may be required in connection with the sale and purchase aforesaid, so as to fully give the assent and approval of said County of Howard to said sale & purchase and consolidation, provided that the said county of Howard shall be entitled to four thousand shares (4,000) of the capital stock of the said consolidated road, to wit, the Missouri, Kansas & Texas Railway Company, of the par value of one hundred dollars each, and that a certificate of said stock be delivered to said agent when he shall, in behalf of said county, assent to said sale and purchase and consolidation.

And on the 1st day of May, 1871, the following, among other proceedings, were had, to wit:

Order of county court, May 1, 1871.

The court appoint' James R. Estill agent of the county of Howard to vote the stock of said county in the Tebo and Neosho Railroad Company in all meetings of the stockholders thereof, and to represent the county in all elections for directors of said railroad company.

And on the 16th day of August, 1871, the following proceedings were had, to wit:

Order of county court, Aug. 16, 1871.

John L. Morrison, agent for the sale of bonds issued to the Tebo and Neosho Railroad Company, presents a report and settlement which is approved and ordered filed and recorded. Said agent is credited on said settlement by the sum of $3,012.04, his commission on the amount of money received by him. It is ordered that said Morrison pay into the county treasury $5,352.95, amount due the county for money advanced said railroad company to make surveys and pay other expenses. It is further or-

dered that said Morrison retain in his hands the sum of $1,500.00
61 to pay for right of way between Boonville and Fayette, now in suit, if any damages are allowed in said suits, and that said Morrison hold the balance as shown in said settlement, $12,416.73, subject to the order of this court.

And on the 28th day of August, 1871, the following proceedings were had, to wit:

Order of county court, Aug. 28th, 1871.

Ordered by the court that the order of this court made 6th November, 1869, authorizing subscription of one hundred & fifty thousand dollars to the capital stock of the Tebo and Neosho Railroad Company be modified, so as to require said railroad to run from Fayette, in Howard County, to any point on the line of the North Missouri Railroad in Randolph County.

It is further ordered by the court, that whenever the said Tebo and Neosho Railroad Company shall enter into a contract with a responsible party for the entire and complete construction of said road, ready for operation from Sedalia, in Pettis County, by Boonville to Fayette, thence to the North Missouri Railroad, the sum of twelve thousand four hundred and sixteen $\frac{73}{100}$ dollars now in the hands of Jno. L. Morrison, commissioner, shall be paid to said railroad company or its agent. It is further ordered, that whenever said contract for such construction shall have been entered into, and work commenced north of Fayette, bonds of the county of Howard for the sum of two hundred thousand dollars, the remainder of the entire subscription of said county to said railroad company, in the sums of one thousand dollars each, to bear date the day of the execution of said contract, due ten years after date, payable in current funds, at the National Bank of Commerce, in New York, bearing eight per cent. per annum in-
62 terest, payable semi-annually, in current funds, at the same bank, with coupons for interest attached; said bonds to be signed by the presiding justice of this court, and attested by the clerk with the seal of the court, the coupons to bear the signature of the clerk lithographed; be prepared by the clerk of this court, and delivered to said railroad company or its agent; provided, that said work on said railroad in Howard County be commenced within twenty days after the execution of the contract for such construction; and said road to be completed and cars running to Fayette within eight months after the execution of such contract, and to its intersection with the North Missouri Railroad within six months after the the time fixed for its completion to Fayette.

This is all the evidence offered, and the conclusion of the court is that the law is for pl'ff, and judgment accordingly.

(Signed) A. KREKEL, *Judge.*

And at said last-mentioned regular stated term of said court the following further proceedings were had in said case, on the 3d day of March, A. D. 1880, to wit:

Supersedeas bond filed.

CENTRAL NATIONAL BANK OF BOONVILLE
vs.
HOWARD COUNTY. } 1349.

This day there is presented to the court a writ of error to reverse the judgment in the above cause, a citation directed to the said plaintiff, and a supersedeas bond in the sum of seven thousand five hundred dollars ($7,500.00), which said writ of error is allowed, said citation signed, and supersedeas bond approved, and ordered to be made part of the record herein.

63 It is further ordered by the court, that the supersedeas bond heretofore filed on January 21st, 1880, be cancelled and returned to the makers thereof.

And said supersedeas bond, so filed as aforesaid, is in the words and figures following, to wit:

Supersedeas bond.

Know all men by these presents that we, Howard County, in the State of Missouri, as principal, and Arthur F. Davis and Horace Kingsbury, as sureties, are held and firmly bound unto the Central National Bank of Boonville, Missouri, in the full and just sum of seven thousand five *thousand* dollars, to be paid to the said Central National Bank of Boonville, Missouri, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 23d day of February, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately, at the November term, A. D. 1879, of the circuit court of the United States for the eastern division of the western district of Missouri, in a suit depending in said court between The Central National Bank of Boonville, Missouri, plaintiff, and Howard County, in the State of Missouri, defendant, judgment was rendered against the said Howard County; and the said Howard County having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Central National Bank of Boonville, Missouri, citing and admonishing it to be and appear at a Supreme Court of the United States to be held at Washington, D. C. on the second Monday of October next:

64 Now, the condition of the above obligation is such that if the said Howard County shall prosecute said writ to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

HOWARD COUNTY, MO., [SEAL.]
By J. W. MORRIS, *Agent Co.*
ARTHUR F. DAVIS. [SEAL.]
HORACE KINGSBURY. [SEAL.]

Howard Co. & A. F. Davis signed & sealed in presence of—
SID. B. CUNNINGHAM.

Approved by—
A. KREKEL,
Judge.

65 UNITED STATES OF AMERICA,
Western District of Missouri, Eastern Division, set.:

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing writing is a true transcript of the record and proceedings in case No. 1349, of The Central National Bank of Boonville against Howard County, Missouri, as fully as the same remains of record and on file in my office.

Witness my hand as clerk, and the seal of said court. Done at office, in the city of Jefferson, this sixteenth day of July, 1880.

[SEAL.] H. C. GEISBERG, *Clerk.*

(Indorsed:) Case No. 1349. U. S. circuit court, western district of Missouri. Central Nat'l Bank of Boonville vs. Howard County. Duly certified copy of the record and *and* proceedings in the above-entitled cause.

(Indorsement on cover:) No. 245. Howard County, in the State of Missouri, plaintiff in error, vs. The Central National Bank of Boonville, Missouri. W. Missouri C. C. U. S. Filed August 2nd, 1880.

3717——4

108-314

OFFICE SUPREME COURT U. S.
FILED
JAN 15 1883
JAMES H. MCKENNEY

IN THE

SUPREME COURT

OF THE UNITED STATES.

HOWARD COUNTY IN THE STATE OF MISSOURI,
Plaintiff in Error,

vs.

THE CENTRAL NATIONAL BANK OF BOONVILLE MISSOURI.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF OF PLAINTIFF IN ERROR.

JOHN D. STEVENSON.
for Plaintiff in Error.

ST. LOUIS:
BARNS, HARRIS & CO., PRINTERS,
1883.

IN THE

SUPREME COURT

OF THE UNITED STATES.

HOWARD COUNTY IN THE STATE OF MISSOURI,
Plaintiff in Error,

vs.

THE CENTRAL NATIONAL BANK OF BOONVILLE MISSOURI.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF CASE.

Defendant in Error brought suit in the Circuit Court of the United States for the Western District of Missouri upon over-due coupons detached from bonds alleged to be made and issued by the County of Howard, State of Missouri; the aggregate amount of said coupons so sued on being in excess of the sum of five thousand dollars. The

petition contains the usual allegations of the corporate existence of both plaintiff and defendant. That the plaintiff in error made its certain bonds in form following :—

No——— $1000.

UNITED STATES OF AMERICA.

TEN YEARS HOWARD COUNTY BOND,

Interest eight per cent. per annum, payable on the———days of May and November.

Know all men by these presents that the County of Howard, in the State of Missouri, acknowledges itself indebted and firmly bound to the Tebo and Neosho Railroad Company in the sum of One Thousand Dollars in current funds, which the said County hereby promises to pay to the said Tebo and Neosho Railroad Company or bearer, at the National Bank of Commerce, in New York, on the first day of——— 18—, together with interest thereon from the first day of ———, 18—, at the rate of eight per cent. per annum,—which interest shall be payable semi-annually, on the first days of———and———of each year, in current funds, on the presentation and delivery at said Bank of the coupons hereto severally attached ;—this bond being issued in pursuance of an order of the County Court of Howard County, made at the———term of said Court, held in the city of Fayette, in the year A. D. 18—, which order was made in accordance with an act of the General Assembly of the State of Missouri, entitled "An Act to Incorporate the Tebo and Neosho Railroad Company," approved January 16th, 1870.

Done at the city of Fayette, County of Howard aforesaid this———day of———18—.

WM. R. HEATH.

[SEAL.] Presiding Justice of the County Court of Howard County, State of Missouri.

Attest A. J. HERNDON,

Clerk of the County Court of Howard County, State of Missouri.

With Coupons attached in the following form :

Fayette, Howard County, Missouri.
———1st, 18—.

The County of Howard acknowledges to owe the sum of forty dollars in current funds on the first day of———18— interest on bond No——for one thousand dollars and payable to bearer at the National Bank of Commerce in New York.

A. J. HERNDON,
Clerk of Howard County Court.

Petition further states that defendant in error was the owner and bearer of the coupons exhibited in said suit. That plaintiff in error issued, negotiated and delivered said bonds and the coupons attached to the Tebo and Neosho Railroad Company in payment of a subscription made by Howard County to the capital stock of said Railroad Company, under and by virtue of an act entitled "An Act to Incorporate the Tebo and Neosho Railroad Company," approved January 15th 1880, and in pursuance of sundry orders of the County Court of Howard County, and said authority is recited on the face of the bond; and that plaintiff in error levied and collected taxes for seven years to pay the interest on said bonds and did pay the same.

Petition further states that coupons sued on were duly presented for payment, and payment demanded, and payment thereof was refused, and that the same are still due and unpaid, and asks judgment for amount of coupons and interest.

The answer of plaintiff in error (defendant below) puts in issue the validity of the bonds sued on, denies they are the obligations of Howard County, denies that they were issued or made by authority of any law of the State of Missouri in force at the time of the making said instruments, denies that the county court of Howard County had any power or authority of law to authorize the making of the said instruments of writing, or to do or authorize to

be done any act whereby the County of Howard became liable to pay any sum of money to plaintiff below, or any one else, on account of the causes of action exhibited by the plaintiff below, and asks to be discharged with costs.

The plaintiff filed general replication.

On the trial below (jury being waived) the Court sitting as a jury found the law of the case to be with plaintiff below and gave judgment for the sum of $5678.10:

The Court made a special finding in the case (Printed Record page 19; and following), and declared the law of the case to be with the plaintiff and judgment accordingly. Thereupon the defendant below brings case to this court by writ of error.

ASSIGNMENT OF ERROR.

In the Supreme Court of the United States.

HOWARD COUNTY, IN THE STATE OF MISSOURI, *Plaintiff in Error,*
vs.
THE CENTRAL NATIONAL BANK OF BOONVILLE. } No. 245.

The plaintiff in error assigns for error:

1st. The court below erred in its declaration of the law of the case.

2d. The court below erred in rendering judgment for plaintiff below.

3d. The law of the case was with plaintiff in error and the court below should have so declared.

4th. The judgment below should have been for plaintiff in error.

J. D. STEVENSON,
for Plaintiff in Error.

Extracts from Act Incorporating the Tebo and Neosho Railroad Company.

An Act to incorporate the Tebo and Neosho Railroad Company.

Sec. 6. Said company shall have full power to survey, mark, locate, construct, maintain and operate a Railroad, *commencing at any point on the Pacific Railroad, between the west bank of the Lamine river, and Muddy Creek, in Pettis county, by the most direct and practical route in a southernly or south-westerly direction*, through Henry county; *thence to some point on the State line* between the north-west corner of Jasper county and the south-east corner of McDonald county; ****** and may extend branch railroads into and through any counties that the Directors may deem advisable.

Sec. 8. The eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of an act entitled "An Act to Incorporate the Osage Valley and Southern Kansas Railroad Company," Approved November 21st, 1857, are hereby rendered and declared to be applicable to the company hereby incorporated; and all powers therein contained are extended to the Tebo and Neosho Railroad Company.

This act approved January 16th, 1860.

An Act to Incorporate the Osage Valley and Southern Kansas Railroad Company.

Section 14. It shall be lawful for the County Court of any county in which any part of the route of said railroad or branches may be, or any county adjacent thereto, to subscribe to the stock of the company or invest its three per cent. fund or other internal-improvement fund belonging to the county as stock in said road, and for the stock sub-

be done any act whereby the County of Howard became liable to pay any sum of money to plaintiff below, or any one else, on account of the causes of action exhibited by the plaintiff below, and asks to be discharged with costs.

The plaintiff filed general replication.

On the trial below (jury being waived) the Court sitting as a jury found the law of the case to be with plaintiff below and gave judgment for the sum of $5678.10:

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J. D. STEVENSON,
for Plaintiff in Error.

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Sec. 8. The eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of an act entitled "An Act to Incorporate the Osage Valley and Southern Kansas Railroad Company," Approved November 21st, 1857, are hereby rendered and declared to be applicable to the company hereby incorporated; and all powers therein contained are extended to the Tebo and Neosho Railroad Company.

This act approved January 16th, 1860.

An Act to Incorporate the Osage Valley and Southern Kansas Railroad Company.

Section 14. It shall be lawful for the County Court of any county in which any part of the route of said railroad or branches may be, or any county adjacent thereto, to subscribe to the stock of the company or invest its three per cent. fund or other internal-improvement fund belonging to the county as stock in said road, and for the stock sub-

scribed in behalf of the county may issue the bonds of the county to raise the funds to pay the same, and take proper steps to protect the interest and credit of the county: may appoint an agent to represent the county, vote for it, and receive its dividends. * * * * * *

Section 15. Said company shall have power to extend, construct, maintain and operate their said railroad or branches beyond the limits of this State, and are hereby authorized to make contracts for the same, and shall have power to contract for and construct all necessary bridges over navigable streams, so the same may in no wise interfere with the free navigation of the same.

Approved November 21st, 1856.

ARGUMENT.

There is but one question to be considered in this case—the question of power. This court has settled beyond all controversy, that the want of power or authority to make the bond sued on, is fatal. Such bonds are void in the hands of all holders, and no subsequent acts can help them. If the power to make the instrument does not exist, the defence is complete.

The Legislature of the State of Missouri by act approved January 16th, 1860, incoporated the Tebo and Neosho Railroad Company.

Sec. 6 of that act authorized the construction of a railroad from an initial point, or base, located at a point on the *Pacific Railroad* between the west bank of the Lamine River and Muddy Creek, in Pettis County, thence through Henry County to a point on the State line; the direction of the route is fixed in a *southerly* or *south-westerly* direction, with authority to build its branches. The initial point or base of the road thus authorized to be constructed, was in Pettis County, the second tier of counties south of the Mis-

souri River. This is the only road the Tebo and Neosho Railroad was authorized to construct, and to this road and its branches the county court of any county in which *any part of the route* of said railroad or branches may be, or any county *adjacent* thereto, it is made *lawful* to subscribe to the stock of the company and to issue bonds to pay such subscription. This charter was granted in 1860 and lay dormant until the adoption of the Constitution of 1865. In the year 1862, for the first time, the company was organized and the work of construction commenced.

The initial point or base of the road was fixed at Sedalia, in Pettis County, through which the Pacific Railroad was built. The charter of the road authorized the construction of a road in a southerly or south-westerly direction through Henry county, (a county south of and adjoining Pettis county) to a point on the State line, between the corners of Jasper and McDonald counties. To this main line, branches were authorized to be built, and counties through which the main line was located or through which branches were built could subscribe to the capital stock, as also counties adjacent thereto. In point of fact no branches were ever located or constructed. In the year 1867, (See printed record p. 19 and following) the Board of Directors, by resolution, determined to extend the main line of the Tebo and Neosho Railroad —from Sedalia in a north-easterly direction to Boonville, on the Missouri river, then cross the Missouri river, on through Howard county, Randolph county and Monroe county. On the 8th day of July, 1869, (see printed record pp. 24 and 25) the certificate of the action of the Board of Directors extending the main line of the Tebo and Neosho railroad in a north-easterly direction, was filed in the office of the Secretary of State.

The subscription of stock by the Howard County Court and the issue of the bonds of the county sued on, and all the orders of the County Court of Howard County were

made after the determination of the board of directors of the Tebo and Neosho Railroad Company to build their railroad in a north-easterly direction. The Legislature of Missouri fixed the initial point of the road authorized to be built at a point on the Pacific Railroad in Pettis County, and thence to be constructed in a southerly or south-westerly direction to the south-western border of the State. There can be no question about this authority; it is plain and not to be misunderstood—authority to build a railroad from the Pacific Railroad in a southerly or south-wssterly direction to a point on the south-west border of the State, and more specifically to fix the route of the road authorized, required it to pass through Henry, a county south of and adjoining Pettis County. The Board of Directors of the Tebo and Neosho Railroad Company being determined to connect their road with a system of roads leading to Chicago, and adverse to the policy of the Legislature of the State, by resolution, without legislation of any kind, determined to extend their main line north of the Missouri River.

It is not necessary to discuss the legal status of this corporation, exercising corporate powers not granted by the Legislature of the State. The question for our consideration is, can the language of the charter of the Tebo and Neosho Railroad, authorizing a road to be constructed from the Pacific Railroad in Pettis County, in a southerly or south-westerly direction to the State line, be construed into an authority to build a railroad from the Pacific Railroad in Pettis County in a north-easterly direction to the Mississippi River, and authorizing the counties on that line of road to subscribe to the capital stock of the Tebo and Neosho Railroad Company, issue bonds &c. Surely the text of the charter—"Said company shall have full power to survey, mark, locate, construct, maintain, and operate a railroad, commencing at any point on the Pacific Railroad between the west bank of the Lamine River and Muddy Creek in

Pettis County by the most direct and practicable route, in a southerly or south-westerly direction through Henry County, thence to some point on the State line, between the north-west corner of Jasper County and the south-east corner of McDonald County"—Pettis County being in the second tier of counties south of the Missouri River, Henry County south of Pettis and McDonald and Jasper Counties, being on the western and south-western boundary of the State—was authority to build a road south of the Missouri River from a fixed base, the Pacific Railroad, in a declared direction southerly or south-westerly, and not an authority to build a road in a north-easterly direction, crossing the Missouri River and traversing the counties of Howard, Randolph, Monroe, Ralls and Marion to the Mississippi River. If the construction of the text of the charter of the Tebo and Neosho Railroad Company quoted above is correct, then under it Howard County was not authorized to subscribe to the capital stock of said road; not being on the route of the authorized road or adjacent thereto. To look elsewhere for authority, we will consider the power of this corporation to construct and maintain branches. In Sec. 6, this additional language is used; "and may extend branch railroads into and through any counties that the Directors may deemad visable." This clause unquestionably did authorize branches to the main line, authorized to be built; the clear construction of the clause is, that to your main line, as authorized to be built from the Pacific Railroad in Pettis County in a southerly or south-westerly direction to the State line you may construct branch railroads. The terms trunk or main line and branch railroads, are terms derived from the *simile* of a tree; trunk—branches. The branches are offshoots of the trunk-line, the trunk-line is based on the initial point, as the base of the tree is the surface of the earth. Can any fair construction of this text be construed to be authority to build anything else than a branch

from this trunk line. Can the extension of the main line from the initial point, the Pacific Railroad, in a north-easterly direction, be considered a branch railroad within the meaning of the charter? I think not, it destroys the simile of the tree and its branches. No trees branch under the surface. Sec. 15 of the "Act to Incorporate the Osage Valley and Southern Kansas Railroad Company," made applicable to the Tebe and Neosho Railroad Company, authorizes the Tebo and Neosho Railroad Company to extend, construct, maintain and operate their said railroad or branches beyond the limits of this State. What railroad? The one authorized to be constructed—from the Pacific Railroad in Pettis county, in a southernly or south-westerly direction, to the State line. That section simply said, when you have built your road to the State line as you are authorized to do, you may extend it beyond the limits of the State. This cannot be construed into authority to build the main line north of the Pacific Railrood. The Legislature of the State meant something when it fixed the initial point of this road on the Pacific Railroad, meant something when it said you shall build your road through Henry County, and thence to the State line in a southernly or south-westerly direction. It meant to and did confine the power granted to a railroad south of the Pacific Railroad.

The Constitution of 1865 was a barrier to further legislation for this corporation. From its adoption railroads could only be built under the provisions of the General Statutes. No further special privileges would be granted. Under the difficulties, the solution was the action of the Board of Directors, by resolution, to extend their road and apply all the original powers granted under their charter. It is for this court to say whether this action of the Board of Directors of the Tebo and Neosho Railroad Company was a warrant and authority for the County Court of Howard County

to charge the tax payers with a debt of $400.000.* It is clear that the authority exercised by the County Court of Howord County, in making the subscription to the capital stock of the Tebo and Neosho Railroad, and issuing bonds of the County to pay the same, was without warrant of law; that it was an exercise of power not granted, and that the bonds so issued are void

The judgment below should have been for defendant; and plaintiff in error brings the case to this court and asks that the judgment below be reversed and the case dismissed.

LAW OF CASE.

Want of power to issue bonds is a complete defence.

When there is a total want of authority to issue bonds, then there can be no such thing as a *bona fide* holding.

Marsh vs. Fulton County, 10 Wal., 676.

Township of East Oakland vs. Skinner, 4 Otto, 255.

JOHN D. STEVENSON.
for Plaintiff in Error.

*This was a futile attempt of the Boaed of Directore of the Tebo and Neosho Ruilroad Company to supply a much needed authority essential to the proper extension of their road, which bad never been granted by the Legislatnre of the State.

MAP EXPLANATION.

Charter line of Tebo and Neosho Railroad: Broad Blue line.
North-Eastern Extension: - - - Broad Red line.
Pacific Railroad: - - - - Broad Green line.

108-314

OFFICE SUPREME COURT U. S.
FILED
MAR 19 1923
JAMES H. McKENNEY, Clerk

Supreme Court of the United States.

No. 245.

HOWARD COUNTY, PLAINTIFF IN ERROR,

vs.

THE CENTRAL NATIONAL BANK OF BOONVILLE, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

Advertiser Steam Print, Boonville, Mo.

In the Supreme Court of the United States,

OCTOBER TERM, 1882.

HOWARD COUNTY, PLAINTIFF IN ERROR,

vs.

THE CENTRAL NATIONAL BANK OF BOONVILLE, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

This is an action upon certain coupons detached from bonds issued by the county of Howard, in the State of Missouri, in payment of a subscription made by said county, through its County Court to the capital stock of the Tebo and Neosho Railroad Company, to aid in the construction of the North Eastern branch of said railroad, which passes through said county. The Tebo & Neosho Railroad Company was incoporated by an act of the General Assembly of the State of Missouri entitled "An act to incorporate the Tebo & Neosho Railroad Company" approved January 16th, 1860. By the Sixth Section of said act the corporation thereby formed was given full power "to survey, mark, locate, construct, maintain and operate a railroad commencing at any point on the Pacific Railroad, between the West bank of the Lamine River and Muddy Creek in Pettis county, by the most

direct and practicable route in a Southerly or South Westerly direction through Henry county, thence to some point on the State line between the North-west corner of Jasper and the South-east corner of McDonald county."

The Pacific Railroad mentioned in the above act passes in an East and West direction through the State of Missouri and is South of the Missouri River. The initial point of the road authorized by said act was fixed at the city of Sedalia on the Pacific Railroad. This is about 50 miles South-west from Howard county. The main line of the Tebo & Neosho Railroad was constructed from Sedalia, South, as provided by the charter. The act of incorporation further provided however as follows: "*And may extend branch railroads into and through any counties that the directors may deem advisable.*"

On the 18th of June, 1867, the directors in accordance with the power thus conferred upon them adopted a resolution extending a line of railroad from the city of Sedalia (their junction with the Pacific Railroad) North Eastwardly to Boonville in Cooper county, thence through Fayette in Howard county to Renick or Moberly on the North Missouri Railroad, and thence through Paris to or near Monroe Station on the Hannibal & St. Joseph Railroad; and directed a preliminary survey to be made and appointed committees to solicit subscriptions to the capital stock of the Company from the counties through which said line passed, and by resolution of the Board of directors of July 10th, 1867, this line was called the North Eastern branch extension of the Tebo & Neosho Railroad, and it was provided that the means contributed by private, town or county subscriptions, for the construction of said branch, should be applied solely thereon and that separate accounts should be kept of the same. Certain Sections of the charter of the Osage Valley and Southern Kansas Railroad Company are, by Section Eight of the above mentioned act to incorporate the Tebo & Neosho Railroad Company, re-enacted and made a part of the charter of the last named company. Among others § 14 Acts of 1857, p. 62, is incorporated into the act establishing the Tebo & Neosho

Railroad Company. This section provides that "it shall be lawful for the County Court of any county in which any part of the *route of said road or branches* may be or any county adjacent thereto, to subscribe to the stock of the Company or invest its three per cent. fund or other internal improvement fund belonging to the county as stock in said road, and for the stock subscribed in behalf of the county, may issue the bonds of the county to raise the funds to pay the same and to take proper steps to protect the interest and credit of the County Court, may appoint an agent to represent the county, vote for it and receive its dividends."

After the passage by the Board of directors of the aforesaid resolution making the North Eastern branch extension through Cooper and Howard counties, the County Court of Howard county, under the power granted by the above act, on the 5th of February, 1868, subscribed, in behalf of that county, two hundred and fifty thousand dollars to the capital stock of the Tebo & Neosho Railroad Company, to aid in building said branch extension, having first taken a vote of the tax-paying citizens of the county in order to be advised of their wishes in the premises. This vote resulted in a large majority, more than two thirds, in favor ot the subscription. This election was simply held for the information of the County Court, as the act did not require a vote. After this expression by the people a commissioner was appointed to enter the subscription upon the books of the Company, which was done, and it was duly accepted by the Company on the 28th day of February, 1868. Afterwards on the 6th day of November, 1869 an additional subscription was made by the County Court of one hundred and fifty thousand dollars, and it was entered upon the books of the company and accepted by it on the 8th day of December, 1869. The county of Howard then issued its bonds in payment of its subscription. These bonds are payable to the Tebo & Nesho Railroad Company or bearer, and for the sum of one thousand dollars with interest payable semi annually at eight per cent per annum: and they recite upon their face that they were issued in pursuance of an order of the County Court

of Howard county, made in accordance with an act of the General Assembly of the State of Missouri entitled "Act to incorporate the Tebo & Neosho Railroad Company," approved Jan. 16th, 1860. The bonds were placed upon the market and sold, and the proceeds used in the construction of said Railroad through Howard county.

The said railroad was completed, and is now, and has ever since been in full operation through said county, as originally intended, at the time of said subscriptions.

The County Court of Howard county, for several years, levied and collected a tax to pay the interest due on said bonds, and regularly paid the semi-annual interest coupons until March, 1878, and also redeemed a number of the bonds. The County voted the stock by a commissioner, duly appointed for that purpose, at all the meetings of the Tebo & Neosho railroad company until the year 1874, when said North Eastern branch was sold by said company, to the Missouri, Kansas & Texas Railway Company, and the County of Howard exchanged its stock in the first named company for 4,000 shares of stock in said M. K. & T., company, which it still held at the time of the trial in the court below. Since that time the County has sold this stock and received therefor something near $140,000. No suggestion of the invalidity of the bonds was made either by the County authorities or the people for many years, and no attempt was made to arrest the issue of the bonds or to test their validity until long after the County had reaped all the benefits of the contract, and the bonds had been negotiated and thousands of dollars invested in them, upon the faith of the action of the defendant, its officers and citizens. The answer of the defendant sets up want of power to make the bonds, and asseats that the original line of railroad, authorized to be built, was to extend South from the City of Sedalia, and that the extension north through Howard County was not a part of the main line, as authorized by the charter, and that it was not built under the power to extend branches because it ran in the same general direction as the main line and formed practically an extension of the same, and that the company had no power to extend either the main line or a

branch through Howard County and therefore, the County had no power to subscribe. There is no suggestion of fraud or wrong-doing, and no intimation that the county did not reap the full benefit of its contract, but the defense stands upon the technical ground that this railroad was not a branch—a ground that was never advanced until the county was securely possessed of the advantages to be gained from the location of the road, and the possession of its stock.

The plaintiff, being a National Bank, instituted action upon the coupons in the Circuit Court of the United States for the Western District of Missouri, the district in which the defendant county is located. A stipulation was filed that no exception should be taken to the joinder of a number of coupons in the same count in the petition, and that the answer to the first count should be taken as an answer to all of the counts.

A jury was waived by the parties and the cause was submitted to the court. There was a special finding by the court of the facts which, is in substance as above stated, and upon this finding there was judgment for plaintiff below for $5,678.-10, and the county has brought the case to this court by writ of error.

ARGUMENT.

I.

Want of power to make the subscription is the only defense pleaded, and is the only one that could be made against the bonds in the hands of the plaintiff, it being a *bona fide* holder for value and before maturity.

II.

It is settled by numerous decisions, both of this court and of the Supreme Court of Missouri, that the power con-

ferred by the act incorporating the Tebo & Neosho Railroad Company, approved January 16th, 1860, upon County Courts to subscribe to the capital stock of the company, without a vote of the people, was not repealed or affected by the constitution of 1875, or the act of 1861.

See County of Henry vs. Nicolay, 95 U. S., 619.
County of Ray vs. Van Sycke, 96 U. S. 675.
County of Schuyler, vs. Thomas, 98, U. S. 167.
The Clark county case, 54 Mo., 58.
State vs. Macon county, 41 Mo., 453.

III.

The defendant had no inherent power to make the subscription and issue the bonds. Legislative authority was necessary to enable it to do so. By the act incorporating the Tebo & Neosho Railroad Company, the County Court of any county in which any part of said railroad or branches might be, or any county adjacent thereto, was authorized without a vote of the people to subscribe to the capital stock of said company, and to issue bonds of the county to raise funds to pay such subscription. The right of Howard county to subscribe, therefore, depended upon the power of the railroad company, under its charter, to extend its railroad or branches into said county, or adjacent thereto. As a matter of fact, the branch railroad *was* built and is now in operation through the entire length of said county. This is not denied, but it is said, by the defendant county, that the railroad company had no legal right to extend its *main line* northeast from Sedalia, and that it could not make a branch in that direction; because, such a branch would be a practical extension of the main line, and, therefore, not a *branch;* and that the railroad built was not authorized by the charter. Upon this technical ground, the entire defense is based. The case turns upon the construction of this act. *Little regard would have been paid to the Judge or legislator, who, in 1868, might have suggested that this law should be con-*

strued as now contended by the county. Schuyler County vs. Thomas, 98 U. S., 172. The act provided that the railroad should commence on the Pacific road and run in a southe n or south-western direction; and, further, that the directors might *extend branch* railroads into and through *any counties that the directors might deem advisable.*

The language of the charter is broad. It does not restrict the directors either as to the direction in which the branches should be run or the points from which they should be projected. This is left to the discretion of the directors, and is restricted in no manner whatever by the terms of the act. If the limitation contended for, as to the direction in which branches might be built exists, it is not to be found in the language of the act, unless the definition of "branch railroad" necessarily excludes a road extending from one of the termini of the main line, and in the same general direction thereof. Certainly there are no expressions in the act in any manner or form limiting or restricting this right. (See Nicolay vs. Henry County. *Supra.*)

The act does not say that they may build lateral roads, but may *extend* branch railroad into and through *any counties* the directors may deem advisable. What is a branch railroad? It is a feeder to the main line. It is one that will be run in connection with the trunk road, adding to its business and commerce. A branch railroad might be extended from Sedalia as well as from any other point on the road. Can it be that such a branch could be built from Sedalia east, west or north, but not north-east? Could the directors extend on west, to Kansas City, or east, to St. Louis, or north-west, to Lexington, in said State, and not north-east through Howard county? Then, again, if the railroad had started a mile south of the northern terminus the of the Tebo and Neosho main line, and run, as it does now, would it be a branch, and not one because it starts from the end of the line? Can such a narrow and constrained interpretation be given to the act to defeat the just debt of the defendant? No reason can be suggested why

the corporation formed by the act of 1860, could extend branch railroads from Sedalia to all points of the compass except one. The language of the act does not so restrict the right. It would be an interpolation to insert such an exception therein. But we are not without direct authority upon this point.

IV.

The Supreme Court of Missouri, after a careful consideration, have expressly decided this question, in case of Atlantic and Pacific Railroad Company vs. City of St. Louis, 66 Mo., 228. The court says: "*The Court of Appeals and the respondent's attorney seem to think that it could not be a branch railroad, because, it ran in the same direction as the main track.* If the company by building to Seventh Street, and there stopping for years, is precluded forever from extending its main line, east, as held by the Court of Appeals, then that (Seventh Street) is as much its eastern terminus as if so fixed by its charter. *Now, is there anything in the charter which forbids it from building a branch railroad east to the Mississippi river? Can it be that the company may run a branch road to any point of the compass, except east or in the general direction of its main line? We think such a position untenable.*"

This was an important case, was fully considered, and the court says: "We have given this case the attention which its importance demands," and expressly calls attention to the concurrence, by the entire bench, in the views expressed. It ought to be regarded as a final determination of the construction, in Missouri, of similar charters.

See, also, Mayor of Pittsburgh vs. Pennsylvania Railroad Company, 48 Pa., 355.

V.

If this act was of doubtful import, and there were no express adjudications upon it, the practical construction given to it by the officers and people of the State, would be enti-

tled to great weight. "When a particular construction has been generally accepted as correct, it is not to be denied that a strong presumption exists that the construction justly interprets the intention. Especially when this has been given by officers in the discharge of their duty and rights, have accrued in reliance upon it which would be divested by a decision that the construction was erroneous, the argument *ab inconvenienti* is sometimes allowed to have very great weight." Cooley's Constitutional Limitations, p. 67. Sedgewick on Statutory and Constitutional Law, 251. *Et seq.*

The people of the various counties along the line acquiesced in its being built. The courts condemned the right of way for it and nearly, if not quite a million of dollars in bonds have been issued and negotiated upon the faith of this construction. The Railroad was in fact built and no effort made to arrest work upon it. The courts and people permitted the bonds to be issued and the county received the benefit of the road. The Supreme Court of Missouri in the case of Lee vs. the Tebo & Neosho Railroad Company, 53 Mo., 178 expressly recognizes the right to make this extension *under the charter granted in 1860.* It is true the question was not directly raised. But upon the face of the opinion in that case it appears that that was a proceeding to condemn the land of Lee, in *Howard county*, for a right of way for this Railroad, and that the proceedings were had *under the act of January 16th, 1860, to incorporate the Tebo & Neosho Railroad Company.* Neither court nor counsel suggest any doubt of the right to make this extension under that act, but necessarily recognize the authority to do so by condemning the land, for that purpose. This case shows that not only did the Railroad Company understand that it had the power to build this Railroad through Howard county *under the act of incorporation*, but that this view was acquiesced in by the courts and the people.

VI.

It may be suggested, however, that the directors attempted in July 1869, to comply with the General Statutes of the

State making provisions for extending the main line of Railroads from either terminus thereof and filed a resolution on the 6th of July, 1869, with the Secretary of State, attempting to make this extension under the General law. It will be readily perceived from the case of Lee vs. the Tebo & Neosho Railroad Company, 53 Mo. 178, that the extension was made under the special charter of the Company, and that the Company and the county acted upon that theory. Again the resolutions making the extension were adopted June 18th, 1867, and July 10th, 1867, and a subscription by Howard county of $250,000, was made and accepted on the 5th day of February, 1868. The resolutions filed with the Secretary of State, which defendant claims, tends to show an extension of the main line under the general law was not adopted until July 3d, 1869. This makes it plain that the Company was proceeding with the building of this Railroad under its charter.

It was suggested in the court below that it is not used as a branch, but that cars pass continuously over it as an extension of the main line. This, however, does not appear as a fact in the record; if it did, the holders of the bonds could not be affected by it. The main line was sold and operated before this line was completed. Suppose a branch had been built East or West, and after its completion the Company had run its cars over such branch direct from the main line, would this subsequent action of the Company invalidate bonds issued to it as a branch? Would one be a branch and the other not because a curve was made at Sedalia in one case and in the other the road was in the general direction of the main line? Bondholders can not be affected by the manner in which the road was subsequently used.

Again, this is wholly immaterial. The Company by its charter had power as shown above to extend a branch Railroad into and through Howard county, and the county had power to issue the bonds upon the branch roads being so extended. The bonds upon their face recited that they were issued under the authority of the act to incorporate the Tebo & Neosho Railroad Company, approved June 16th, 1860.

"The purchasers of the bonds were not bound to know whether or not the proceedings of the Company (extending the branch) were regular. The charter of the Tebo & Neosho Railroad Company contained the power to construct the branch and gave the County Court power to subscribe stock for it * * * The purchaser therefore was apprised by the law that power existed in the County Court to issue such bonds without any election of the people, and there was nothing on their face to show that they were not regularly issued. It was not incumbent on him to inquire whether the railroad company had pursued all the regular steps necessary to entitle it to receive these bonds." Nicolay vs. Henry County, 95 U. S. 619, 626. The county, under the charter, had the power to issue the bonds, and they recite upon their face that they were issued pursuant to that power, and it was not necessary for a purchaser to look into the regularity of the proceedings of the company in extending the branch. In the Henry county case, above cited, no resolution was adopted declaring the branch, but it was held that a purchaser of the bonds could not be affected by this omission.

VII.

There is less merit in the attempted defense in this case than in any of the numerous actions involving the validity of municipal bonds that in the last few years have been brought before this court. There is no suggestion, or even intimation of any fraud or wrong-doing, on the part either of the county officials who issued the bonds, or the company that received them. In some of the cases there may have been circumstances of peculiar hardship and oppression upon the citizens and tax-payers calling for relief. In some, large burdens may have been imposed upon the people. This is not one of that class.

There is nothing to commend the defense here to the favorable consideration of the court. The County Court issuing these bonds acted with commendable prudence, and invited

an expression of the will of all tax-paying citizens as to whether or not the subscription should be made. A vote was taken to advise the county officials as to the wishes of their constitutents in the matter. More than two-thirds favored the proposition to subscribe, and the subscription was made and accepted by the company. The railroad company faithfully complied with its part of the contract, and issued and delivered its stock to the county. The road was at once built through the centre of the county and has been in full operation ever since that time. The defendant for seven or eight years regularly paid the interest coupons as they became due, fully recognizing the validity of the bonds. An agent of the company appeared at each stock holders meeting and voted the stock. Afterwards this was exchanged for 4,000 shares of the stock of the M. K. & T. railroad company, which at the time of the trial below the defendant county still had, and which, as shown by the market reports, was then worth from 40 to 45 cents on the dollar. Since the trial as will doubtless be conceeded by counsel for plaintiff in error, this stock has been sold by the county for $140,000, or about that amount, and the proceeds covered into the county treasury. No attempt was made to arrest the issue of the bonds. No suggestion as to their invalidity was ever heard. Shall the county be permitted, with all the benefits of the contract fully realized—vith the proceeds of the very stock for which the bonds were issued, lying in its treasury—after the rocognition of their bonds by the payment of interest thereon for years, now be heard to allege their invalidity upon the ground that this extension through the county was not a branch, because it ran in the same general direction as the main line? Shall such a pretex prevail? If this was a direct proceeding by the company to compel the issuance of the bonds, such an inequitable defense ought not to be allowed. Much less ought the bonds to be held invalid in the hands of *bona fide* holders for value, who bought in reliance upon the action of the county authorities during the many years that the county recognized their validity. "Upon the clearest principle of justice the tax-payers of Howard county

are concluded by the acts of their official agents and by their own failure, either intentionally or from neglect to assert, by appropriate proceedings their legal right (if any they ever had)," to prevent the building of this road through their county and the issue of bonds in its aid.

See County of Ray vs. VanSyckle, 95 U. S., 675.
Flagg vs. City of Palmyra, 33, Mo. 440.

Under the circumstance of this case, the defense set up is most inequitable and unjust and the remarks of this court in VanSyckle vs. Ray county, are peculiarily appropriate. The judgment below sustained the validity of the bonds and we ask that it be affirmed.

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